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20JE-CC00277 - BEN SCOFIELD V WSTR HOLDINGS, INC. D/B/A BIG ET AL (E-CASE)

Case Header	Parties & Attorneys	Docket Entries	Charges, Judgments & Sentences	Service Information	Filings Due	Scheduled Hearings & Trials	Civil Judgments	Garnishments/Execution
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This information is provided as a service and is not considered an official court record.

[Click here to eFile on Case](#)Sort Date Entries: ☒ Descending

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[Click here to Respond to Selected Documents](#)☐ Ascending**10/30/2020** ☐ **Summons Withdrawn**

Document ID - 20-SMCC-655; Served To - BUCHHEIT OF HERCULANEUM, INC; Server - ; Served Date - 30-OCT-20; Served Time - 00:00:00; Service Type - Other; Reason Description - Recalled/Withdrawn

☐ **[Order of Dismissal](#)**

PROPOSED ORDER TO DISMISS BUCHHEIT OF HERCULANEUM ONLY GRANTED. CLAIMS ARE STILL PENDING AGAINST OTHER DEFENDANTS. SO ORDERED; VICTOR MELENBRINK, CIRCUIT JUDGE DIV. FIVE

09/22/2020 ☐ **Case Mgmt Conf Scheduled**

Scheduled For: 07/09/2021; 9:00 AM ; VICTOR JOSEPH MELENBRINK; Jefferson

☐ **Jury Trial Scheduled**

Scheduled For: 10/04/2021; 8:30 AM ; VICTOR JOSEPH MELENBRINK; Jefferson

09/18/2020 ☐ **Hearing Held**

Scheduled For: 09/18/2020; 9:00 AM ; VICTOR JOSEPH MELENBRINK; Jefferson

09/17/2020 ☐ **[Proposed Order Filed](#)**

Proposed order granting Buchheits motion to dismiss; Electronic Filing Certificate of Service. SENT TO JUDGE FOR SIGNATURE

Filed By: BRIAN RICHARD SHANK

On Behalf Of: WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC., BUCHHEIT OF HERCULANEUM, INC

☐ **[Proposed Order Filed](#)**

Proposed Joint scheduling order; Electronic Filing Certificate of Service. SO ORDERED; VICTOR MELENBRINK, CIRCUIT JUDGE DIV. FIVE

Filed By: BRIAN RICHARD SHANK

08/13/2020 ☐ **Case Review Scheduled**

This case will be heard remotely via the Zoom teleconference platform. Parties appearing for this docket must either install the Zoom application on a phone or tablet, or must use the Zoom software on a laptop or desktop computer. Registration for a Zoom account is required for attorneys, and strongly encouraged for everyone else. Presence by video is also strongly encouraged, but not required. Upon signing in to the meeting you will be assigned to the waiting room until your case is taken up. It is recommended that attendees use the link below to test their ability to connect to the meeting beforehand. If an attorney or party is unable to comply with the above requirements, contact the court BEFORE the court date. Topic: JeffCo Div 5 (Melenbrink) Docket Time: This is a recurring meeting Meet anytime Join Zoom Meeting <https://us02web.zoom.us/j/86514317935> Meeting ID: 865 1431 7935 One tap mobile +13126266799,,86514317935# US (Chicago) +16465588656,,86514317935# US (New York) Dial by your location +1 312 626 6799 US (Chicago) +1 646 558 8656 US (New York) +1 301 715 8592 US (Germantown) +1 669 900 9128 US (San Jose) +1 253 215 8782 US (Tacoma) +1 346 248 7799 US (Houston) Meeting ID: 865 1431 7935 Find your local number: <https://us02web.zoom.us/j/86514317935> IF SCHEDULING ORDER FILED, NO APPEARANCE REQUIRED

Associated Entries: 09/18/2020 - Hearing Held

Exhibit A

Scheduled For: 09/18/2020; 9:00 AM ; VICTOR JOSEPH MELENBRINK; Jefferson

☐ **Hearing Held**

VIA ZOOM. MT GRANTED OVER DEFENDANT'S OBJECTION. ATTORNEY KARFIS TO DRAFT PROPOSED ORDER AND EMAIL TO JUDGE.

Scheduled For: 08/13/2020; 10:30 AM ; VICTOR JOSEPH MELENBRINK; Jefferson

07/31/2020 ☐ [Order](#)

FOR PRO HAC VICE SO ORDERED; VICTOR MELENBRINK, CIRCUIT JUDGE DIV. FIVE

☐ [Order](#)

GRANTING DEFENDANT'S CONSENT MOTION TO ADMIT SO ORDERED; VICTOR MELENBRINK, CIRCUIT JUDGE DIV. FIVE

07/30/2020 ☐ [Proposed Order Filed](#)

PROPOSED ORDER GRANTING MILTON KARFIS PRO HAC VICE. SENT TO JUDGE FOR SIGNATURE

Filed By: BRIAN RICHARD SHANK

☐ [Proposed Order Filed](#)

PROPOSED ORDER ADMITTING STEPHANIE M ANDERSON PRO HAC VICE. SENT TO JUDGE FOR SIGNATURE

Filed By: BRIAN RICHARD SHANK

☐ [Motion Filed](#)

Motion pro hac Karfis; Exhibit A; Exhibit B; Electronic Filing Certificate of Service.

Filed By: BRIAN RICHARD SHANK

On Behalf Of: WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC., BUCHHEIT OF HERCULANEUM, INC

☐ [Motion Filed](#)

Motion pro hac Anderson; Exhibit A; Exhibit B; Electronic Filing Certificate of Service.

Filed By: BRIAN RICHARD SHANK

07/29/2020 ☐ [Cert Serv Answers Interrog Fil](#)

COS-Plaintiffs Answers Resp to Def Expert Rogs RFP; Electronic Filing Certificate of Service.

Filed By: DANIEL THOMAS RYAN

On Behalf Of: BENJAMIN ISAAC SCOFIELD

07/10/2020 ☐ [Response Filed](#)

Response to motion for trial setting; Electronic Filing Certificate of Service. SENT TO JUDGE FOR SIGNATURE

Filed By: BRIAN RICHARD SHANK

On Behalf Of: WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC., BUCHHEIT OF HERCULANEUM, INC

☐ [Response Filed](#)

MOTION TO BE TAKEN UP ON THE 08/13/2020 DOCKET @ 10:30 AM SO ORDERED; VICTOR MELENBRINK, CIRCUIT JUDGE DIV. FIVE

07/09/2020 ☐ [Notice to Take Deposition](#)

CROSS NOTICE OF VIDEO TAPED TRIAL DEPOSITION OF WILLIAM CARDEN on August 12, 2020 @ 10:00 am; Electronic Filing Certificate of Service.

Filed By: DANIEL THOMAS RYAN

On Behalf Of: BENJAMIN ISAAC SCOFIELD

07/07/2020 ☐ [Notice to Take Deposition](#)

Notice of deposition; Electronic Filing Certificate of Service.

Filed By: BRIAN RICHARD SHANK

On Behalf Of: WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC., BUCHHEIT OF HERCULANEUM, INC

☐ [Cert Serv of Interrog Filed](#)

Certificate of service; Electronic Filing Certificate of Service.

Exhibit A

Filed By: BRIAN RICHARD SHANK

On Behalf Of: WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC., BUCHHEIT OF HERCULANEUM, INC

07/01/2020 ☐ [Notice of Hearing Filed](#)

Notice of Hearing re Trial Setting; Electronic Filing Certificate of Service.

Filed By: DANIEL THOMAS RYAN

On Behalf Of: BENJAMIN ISAAC SCOFIELD

☐ [Motion for Trial Setting](#)

Motion for Trial Setting; Electronic Filing Certificate of Service.


Filed By: DANIEL THOMAS RYAN

On Behalf Of: BENJAMIN ISAAC SCOFIELD

06/30/2020 ☐ [Judge/Clerk - Note](#)

This case will be heard remotely via the Zoom teleconference platform. Parties appearing for this docket must either install the Zoom application on a phone or tablet, or must use the Zoom software on a laptop or desktop computer. Registration for a Zoom account is required for attorneys, and strongly encouraged for everyone else. Presence by video is also strongly encouraged, but not required. Upon signing in to the meeting you will be assigned to the waiting room until your case is taken up. It is recommended that attendees use the link below to test their ability to connect to the meeting beforehand. If an attorney or party is unable to comply with the above requirements, contact the court BEFORE the court date. Topic: JeffCo Div 5 (Melenbrink) Docket Time: This is a recurring meeting Meet anytime Join Zoom Meeting <https://us02web.zoom.us/j/86514317935> Meeting ID: 865 1431 7935 One tap mobile +13126266799,,86514317935# US (Chicago) +16465588656,,86514317935# US (New York) Dial by your location +1 312 626 6799 US (Chicago) +1 646 558 8656 US (New York) +1 301 715 8592 US (Germantown) +1 669 900 9128 US (San Jose) +1 253 215 8782 US (Tacoma) +1 346 248 7799 US (Houston) Meeting ID: 865 1431 7935 Find your local number: <https://us02web.zoom.us/j/86514317935>

☐ [Motion Hearing Scheduled](#)

Associated Entries: 08/13/2020 - Hearing Held 

Scheduled For: 08/13/2020; 10:30 AM ; VICTOR JOSEPH MELENBRINK; Jefferson

06/29/2020 ☐ [Notice of Hearing Filed](#)

Notice of Hearing; Electronic Filing Certificate of Service.

Filed By: BRIAN RICHARD SHANK

On Behalf Of: BUCHHEIT OF HERCULANEUM, INC

06/10/2020 ☐ [Memo of Law in Suppt of Filed](#)

Memorandum in Support of Motion to Dismiss; Electronic Filing Certificate of Service.

Filed By: BRIAN RICHARD SHANK

On Behalf Of: BUCHHEIT OF HERCULANEUM, INC

☐ [Motion to Dismiss](#)

Motion to dismiss; Exhibit A; Exhibit B; Exhibit C; Exhibit D; Exhibit E; Electronic Filing Certificate of Service. SENT TO DIV

Filed By: BRIAN RICHARD SHANK

05/29/2020 ☐ [Amended Answer Filed](#)

First amended answer; Electronic Filing Certificate of Service.

Filed By: BRIAN RICHARD SHANK

On Behalf Of: WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC., BUCHHEIT OF HERCULANEUM, INC

05/19/2020 ☐ [Answer Filed](#)

Filed By: BRIAN RICHARD SHANK

On Behalf Of: WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC., BUCHHEIT OF HERCULANEUM, INC

☐ [Entry of Appearance Filed](#)

Exhibit A

Entry of Appearance on behalf of WSTR Holdings, Inc dba Big Dog Treestands, Inc Buchheit of Herculanum, Inc; Electronic Filing Certificate of Service.

Filed By: BRIAN RICHARD SHANK

☐ [Summons Issued-Circuit](#)

Document ID: 20-SMCC-655, for BUCHHEIT OF HERCULANEUM, INC.

☐ **Summons Issued-Circuit**

Document ID: 20-SMCC-654, for WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC..

☐ [Summ Req-Circuit Pers Serv](#)

Memo to Clerk Requesting Summons Be Issued.

Filed By: DANIEL THOMAS RYAN

On Behalf Of: BENJAMIN ISAAC SCOFIELD

04/16/2020

☐ **Judge/Clerk - Note**

OVERPAYMENT OF \$2 WILL BE REFUNDED

☐ **Filing Info Sheet eFiling**

Filed By: DANIEL THOMAS RYAN

☐ **Note to Clerk eFiling**

Filed By: DANIEL THOMAS RYAN

☐ [Pet Filed in Circuit Ct](#)

PETITION.

On Behalf Of: BENJAMIN ISAAC SCOFIELD

☐ **Judge Assigned**

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

BEN SCOFIELD)	
A Missouri resident)	
)	
Plaintiff)	
)	
vs.	)	Cause Number:
)	
	)	Division:
WSTR HOLDINGS, INC. D/B/A BIG DOG)	
TREESTANDS, INC.)	
A Illinois Corporation)	
	)	JURY TRIAL DEMANDED
HOLD SERVICE:)	
Ketra A. Mytech)	
1230 W. Candletree Drive., Suite A)	
Peoria, IL 61614)	
)	
And)	
)	
BUCHHEIT OF HERCULANEUM, INC.,)	
A Missouri Corporation)	
)	
HOLD SERVICE:)	
Reid Willen)	
33 PCR 53)	
Perryville, MO 63775)	
)	
Defendants.)	

PETITION
COUNT I – STRICT LIABILITY

Comes now plaintiff, Ben Scofield and for Count I of his cause of action against defendantsWSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and states as follows:

1. Plaintiff Ben Scofield is now and was at all times herein mentioned a resident and citizen of the State of Missouri. Plaintiff's injury as more fully described below was sustained in

Jefferson County, State of Missouri therefore jurisdiction and venue are proper in the Circuit Court of Jefferson County.

2. Defendant WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. is and was at all times herein mentioned a duly organized and existing corporation under the laws of the state of Illinois and was doing business designing, manufacturing, and selling treestands for deer hunting including the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 (hereafter referred to as the treestand) involved in this incident.

3. Defendant Buchheit of Herculaneum, Inc. is and was at all times herein mentioned a corporation duly organized and existing under the laws of the State of Missouri and was doing business selling treestands for deer hunting including the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 involved in this incident.

4. On or about August 27, 2015 plaintiff was installing a Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 on a tree on property in Ware, Missouri off Brownfield Road in preparation for deer hunting. As plaintiff was at the top of the treestand when finishing the installation, he grabbed the top section of the treestand to steady his way down at which time the treestand snapped and caused him to fall.

5. At the time the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 was designed, manufactured, and sold by defendants WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. the climbing stick treestand was then in a defective condition and unreasonably dangerous when put to a reasonably anticipated use in that the climbing stick treestand was insufficiently designed and/or manufactured so that it would hold plaintiff, would not break when used by plaintiff and prevent plaintiff from falling and sustaining severe injuries.

6. The Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 referred to above was used by plaintiff in a manner reasonably anticipated by defendants.

7. That as a direct and proximate result of the defective and unreasonably dangerous condition of the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 designed, manufactured, and sold by defendants plaintiff has been caused to sustain the following damages to wit: plaintiff sustained injuries to his back, right heel resulting in a fracture, burst fractures at T11 through L3 , and thoracic and lumbar compression fractures which required surgical implantation of rods and screws in his back; plaintiff has incurred medical expenses to date in an amount in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and continues to incur medical expenses for continuing medical care; plaintiff has lost wages in an amount to be determined and his ability to work, labor and enjoy life has been significantly impaired and diminished.

WHEREFORE plaintiff prays judgment against defendants, and each of them, in an amount which is fair and reasonable in excess of \$25,000.00 plus any further relief the Court deems just and proper.

COUNT II – STRICT LIABILITY FAILURE TO WARN

Comes now plaintiff, Ben Scofield and for Count II of his cause of action against defendants WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and states as follows:

8. Plaintiff reincorporates and re-alleges paragraphs 1-7 of his petition as fully set forth herein.

9. The above mentioned Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 was defective and unreasonably dangerous at the time it was designed, manufactured and sold by

defendants in that the climbing stick was insufficiently designed and/or manufactured so that it would not break when used by plaintiff, would hold plaintiff when climbing and would therefore prevent plaintiff from falling and sustaining severe injuries.

10. That defendants and each of them did not give adequate warning of the dangerous condition of the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 as aforesaid.

11. That plaintiff was using the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 in a manner reasonably anticipated by defendants and each of them and as a direct and proximate result of the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 being sold without an adequate warning, plaintiff sustained damages as set forth in paragraph 7 above.

WHEREFORE plaintiff prays judgment against defendants, and each of them, in an amount which is fair and reasonable in excess of \$25,000.00 plus any further relief the Court deems just and proper.

COUNT III – NEGLIGENCE

Comes now plaintiff, Ben Scofield and for Count III of his cause of action against defendants WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. and Buchheit of Herculanum, Inc. and states as follows:

12. Plaintiff reincorporates and re-alleges paragraphs 1-11 of his petition as fully set forth herein.

13. The above mentioned Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 was defective and unreasonably dangerous at the time it was designed, manufactured and sold by defendants in that the climbing stick was insufficiently designed and/or manufactured so that it would not break when used by plaintiff, would hold plaintiff when climbing and would therefore prevent plaintiff from falling and sustaining severe injuries.

14. That defendants knew or should have known of the dangerous condition of the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 and had no reason to believe that plaintiff would realize the dangerous condition.

15. That Defendants failed to use ordinary care to either design the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 to be reasonably safe or defendants failed to use ordinary care to warn plaintiff and others of the risk and hazardous condition of the Big Dog 20- foot Hot Foot Climbing Stick BDSL-20 as aforesaid and as a direct and proximate result of defendants' negligence plaintiff has sustained damages as set forth in paragraph 7 above.

WHEREFORE plaintiff prays judgment against defendants, and each of them, in an amount which is fair and reasonable in excess of \$25,000.00 plus any further relief the Court deems just and proper.

LAW OFFICE OF DANIEL T. RYAN, LLC

By: /S/Daniel T. Ryan
Daniel T. Ryan, #38744
Attorney for Plaintiff
3008 Sutton Blvd., Suite 100
Maplewood, MO 63143
314.222.7717
314.932.2688 (facsimile)
dan@danryanlawoffice.com

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

BEN SCOFIELD)	
A Missouri resident)	
)	
Plaintiff)	
)	
vs.	)	Cause Number:20JE-CC00277
)	
	)	Division:
WSTR HOLDINGS, INC. D/B/A BIG DOG))	
TREESTANDS, INC.)	
A Illinois Corporation)	
	)	JURY TRIAL DEMANDED
SERVE:)	
Ketra A. Mytech)	
1230 W. Candletree Drive., Suite A)	
Peoria, IL 61614)	
)	
And)	
)	
BUCHHEIT OF HERCULANEUM, INC.,)	
A Missouri Corporation)	
)	
SERVE:)	
Reid Willen)	
33 PCR 53)	
Perryville, MO 63775)	
)	
Defendants.)	

MEMO TO CLERK

Comes now Plaintiff and respectfully moves that a Summons be ordered to issue to the following defendants:

WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC.

SERVE REGISTERED AGENT:

Ketra A. Mytech, 1230 W. Candletree Drive., Suite A, Peoria, IL 61614

BUCHHEIT OF HERCULANEUM, INC.

SERVE REGISTERED AGENT:

Reid Willen, 33 PCR 53, Perryville, MO 63775

LAW OFFICE OF DANIEL T. RYAN, LLC

By: /S/Daniel T. Ryan
Daniel T. Ryan, #38744
Attorney for Plaintiff
3008 Sutton Blvd., Suite 100
Maplewood, MO 63143
314.222.7717
314.932.2688 (facsimile)
dan@danryanlawoffice.com



IN THE 23RD JUDICIAL CIRCUIT, JEFFERSON COUNTY, MISSOURI

Judge or Division: VICTOR JOSEPH MELENBRINK	Case Number: 20JE-CC00277	(Date File Stamp)
Plaintiff/Petitioner: BENJAMIN ISAAC SCOFIELD	Plaintiff's/Petitioner's Attorney/Address DANIEL THOMAS RYAN 1717 PARK AVE SAINT LOUIS, MO 63104	
Defendant/Respondent: WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC.	Court Address: P O BOX 100 300 MAIN ST HILLSBORO, MO 63050	
Nature of Suit: CC Pers Injury-Prod Liab		

Summons in Civil Case

The State of Missouri to: WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC.

Alias:

ATTENTION: KETRA A. MYTECH
1230 W. CANDLETREE DRIVE, #A
PEORIA, IL 61614

COURT SEAL OF



JEFFERSON COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

MAY 19, 2020
Michael E. Reuter, Circuit Clerk
By: /s/ ERobinson Deputy Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: _____ (name) _____ (title).
- ☐ other: _____.

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



IN THE 23RD JUDICIAL CIRCUIT, JEFFERSON COUNTY, MISSOURI

Judge or Division: VICTOR JOSEPH MELENBRINK	Case Number: 20JE-CC00277	(Date File Stamp)
Plaintiff/Petitioner: BENJAMIN ISAAC SCOFIELD	Plaintiff's/Petitioner's Attorney/Address DANIEL THOMAS RYAN 1717 PARK AVE SAINT LOUIS, MO 63104	
Defendant/Respondent: WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC.	Court Address: P O BOX 100 300 MAIN ST HILLSBORO, MO 63050	
Nature of Suit: CC Pers Injury-Prod Liab		

Summons in Civil Case

The State of Missouri to: BUCHHEIT OF HERCULANEUM, INC

Alias:

ATTENTION: REID WILLEN
33 PCR 53
PERRYVILLE, MO 63775

COURT SEAL OF



JEFFERSON COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

MAY 19, 2020
Michael E. Reuter, Circuit Clerk
By: /s/ ERobinson Deputy Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: _____ (name) _____ (title).
- ☐ other: _____.

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$._____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. D/B/A BIG DOG)
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

ENTRY OF APPEARANCE

COME NOW Evans & Dixon, L.L.C., and Brian R. Shank, and hereby enter their appearance as counsel for defendants WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC. and BUCHHEIT OF HERCULANEUM, INC.

Respectfully submitted,

EVANS AND DIXON, L.L.C.

By: /s/ Brian R. Shank
Brian R. Shank (#59955)
Metropolitan Square
211 North Broadway, Ste. 2500
St. Louis, MO 63102
Phone: (314) 621-7755
Fax: (314) 621-3136
bshank@evans-dixon.com

*ATTORNEYS FOR DEFENDANTS
BIG DOG TREESTANDS, INC. AND BUCHHEIT
OF HERCULANEUM, INC.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system on this 19th day of May, 2020.

/s/ Brian R. Shank

4434507

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

**DEFENDANTS WSTR HOLDINGS, INC. AND BUCHHEIT OF HERCULANEUM,
INC.'S FIRST AMENDED ANSWER TO PETITION FOR DAMAGES**

NOW COME Defendants WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC. (hereinafter, "Defendant Big Dog Treestands, Inc.") and BUCHHEIT OF HERCULANEUM, INC., (hereinafter, "Defendant Buchheit of Herculaneum, Inc.") by and through their attorneys, and state as follows for their first amended answer to Plaintiff's Petition as a matter of course pursuant to Rule 55.33(a):

COUNT I – STRICT LIABILITY

1. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. lack sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 1; to the extent a response is nonetheless required, the allegations are denied and thus the Plaintiff is left to his proofs.

2. Defendant WSTR Holdings, Inc. d/b/a Big Dog TreeStands, Inc. admits it is an Illinois corporation with its principle place of business in Illinois which sells various hunting products, including a Climbing Stick, Model BDSL-20. The remainder of the paragraph is neither

admitted nor denied; to the extent a response is nonetheless required, the allegations are denied and thus the Plaintiff is left to his proofs.

3. Defendant Buchheit of Herculaneum, Inc. admits it is a Missouri corporation with its principal place of business in Missouri which sells various hunting products, including a Climbing Stick, Model BDSL-20. The remainder of the paragraph is neither admitted nor denied; to the extent a response is nonetheless required, the allegations are denied and thus the Plaintiff is left to his proofs.

4. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. lack sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 4; to the extent a response is nonetheless required, the allegations are denied and thus the Plaintiff is left to his proofs.

5. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc., and deny deny the allegations in paragraph 5. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. further state that the Big Dog Climbing Stick model BDLS-20 was reasonably safe.

6. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. lack sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 6; to the extent a response is nonetheless required, the allegations are denied and thus the Plaintiff is left to his proofs.

7. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. deny the allegations in paragraph 7. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. further state that the Big Dog Climbing Stick model BDLS-20 was reasonably safe.

WHEREFORE Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. request this court enter a judgment of no cause and dismiss this action with prejudice together with costs and attorney fees wrongfully incurred.

COUNT II – STRICT LIABILITY FAILURE TO WARN

8. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. incorporate by reference their response to paragraphs 1-7 of this Petition as if fully set forth under Count 2 herein.

9. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. deny the allegations in paragraph 9. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc., Inc. further state that the Big Dog Climbing Stick model BDLS-20 was reasonably safe.

10. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. deny the allegations in paragraph 10.

11. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. deny the allegations in paragraph 11.

WHEREFORE Defendants request this court enter a judgment of no cause and dismiss this action with prejudice together with costs and attorney fees wrongfully incurred.

COUNT III - NEGLIGENCE

12. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. incorporate by reference their response to paragraphs 1-11 of this Petition as if fully set forth under Count 3 herein.

13. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. deny the allegations in paragraph 13. Defendants further state that the Big Dog Climbing Stick model BDLS-20 was reasonably safe.

14. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneeum, Inc. deny the allegations in paragraph 14. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneeum, Inc. further state that the Big Dog Climbing Stick model BDLS-20 was reasonably safe.

15. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneeum, Inc. deny the allegations in paragraph 15. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneeum, Inc. further state that the Big Dog Climbing Stick model BDLS-20 was reasonably safe.

WHEREFORE Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneeum, Inc. request this court enter a judgment of no cause and dismiss this action with prejudice together with costs and attorney fees wrongfully incurred.

SPECIAL AND/OR AFFIRMATIVE DEFENSES

FIRST DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and first defense to Plaintiff's Petition for Damages state that the petition fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and second defense to Plaintiff's Petition for Damages state that the Plaintiff had a duty to mitigate damages and failed to do so.

THIRD DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and third defense to Plaintiff's Petition state that the Plaintiff failed to exercise reasonable care and caution for Plaintiff's own safety in that Plaintiff failed to act as a reasonably prudent person would under the circumstances, failed to take precautions for Plaintiff's own safety, and such conduct was the sole and/or contributing cause of Plaintiff's own injuries and damages alleged.

FOURTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and fourth defense to Plaintiff's Petition state that the Plaintiff was negligent, contributorily negligent, and/or comparatively negligent in the incident in that Plaintiff failed to act as a reasonably prudent person would under the circumstances, failed to take precautions for Plaintiff's own safety and/or in general failed to exercise the reasonable degree of care for the

circumstances then and there existing proximately resulting in the alleged injuries as will be more fully developed prior to the conclusion of discovery and prior to the trial of this matter.

FIFTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and fifth defense to Plaintiff's Petition state that there was intervening and superseding negligence of others including the Plaintiff and others unknown to Defendants at this time such that the injuries or damages suffered by the Plaintiff were caused in whole or in part by the acts or omissions of the Plaintiff, and/or by other non-parties so that the alleged injuries and damages suffered by the Plaintiff were not proximately caused by the acts or omissions of Defendants.

SIXTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and sixth defense to Plaintiff's Petition state that Plaintiff's claims are barred in whole or in part because the comparative fault of Plaintiff is greater than the aggregate fault of persons, whether or not parties to this action.

SEVENTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and seventh defense to Plaintiff's Petition state that Plaintiff seeks to recover for injuries that were caused by an inherent characteristic of the product which is a generic part of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge common to the community.

EIGHTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and eighth defense to Plaintiff's Petition state that Plaintiff's claims are barred, in whole or in part, because Plaintiff assumed an appreciated, known or obvious risk to his own safety.

NINTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and ninth defense to Plaintiff's Petition state that the risk of harm of which Plaintiff complains was open and obvious and/or a matter of common knowledge, or it should have otherwise been aware of the risk and/or that Plaintiff assumed any risk associated with the use of the subject product.

TENTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and tenth defense to Plaintiff's Petition state that the product about which Plaintiff complains was materially altered and/or modified after it left the control of Defendants.

ELEVENTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and eleventh defense to Plaintiff's Petition state that the product conformed with generally recognized state of the art applicable to the safety of the product at the time the product was designed, manufactured, packaged and labeled.

TWELFTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and twelfth defense to Plaintiff's Petition state that Defendant breached no express or implied warranties pertaining to this product.

THIRTEENTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and thirteenth defense to Plaintiff's Petition state that the Plaintiff's claim is barred because the product complied with applicable governmental or voluntary requirements.

FOURTEENTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and fourteenth defense to Plaintiff's Petition state that the actions of a potential nonparty were the cause, in whole or in part, of any of the Plaintiff's alleged injuries.

FIFTEENTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and fifteenth defense to Plaintiff's Petition state that Defendant reserves the right to amend, delete, add or alter the special and/or affirmative defenses during the course of discovery and trial of this matter.

SIXTEENTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and sixteenth defense to Plaintiff's Petition state that to the extent that discovery supports the same, Defendants assert the defenses of product abuse, produce misuse, and/or production modification.

SEVENTEENTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and seventeenth defense to Plaintiff's Petition state that any warnings given by Defendants were adequate and/or any failure to warn was not the proximate cause of any alleged injury.

EIGHTEENTH DEFENSE

Further Defendants aver that Plaintiff's damages should be assessed based upon the rebuttable presumption of the value of the damages based upon the actual amounts paid to satisfy the costs of the services or materials provided, pursuant to Mo. Rev. Stat. sec. 490.715.5. The dollar amount necessary to satisfy the financial obligation to any of Plaintiff's health care providers represents the value of the medical treatment rendered, and no other amount should be presented to the jury, absent a motion, hearing, and court order to determine the measure of such damages.

NINETEENTH DEFENSE

Further Defendants aver that any verdict rendered and/or judgment entered in this matter on behalf of Plaintiff should be reduced by all applicable settlements with any and all co-defendants, other tort-feasors, and/or insurance carriers or any other person, firm or corporation alleged to be liable for Plaintiff's claimed damages; and Defendants reserve the right of credit or set-off for any amounts paid to, or for settlement or settlements or payment of damages to the plaintiff by any other parties or entities, settling tort-feasors or other non-collateral sources arising out of the subject incident or injuries or damages alleged by Plaintiff, pursuant to R.S.Mo. 537.060.

TWENTIETH DEFENSE

Further Defendants aver that Plaintiff's damages, which are denied by Defendants, were caused in whole or in part by events which preceded or were subsequent to the incident which is the subject of Plaintiff's Petition.

TWENTY-FIRST DEFENSE

Further Defendants aver that any recovery by Plaintiff shall be diminished by Plaintiff's own fault by failing to use the product as reasonably anticipated by the manufacturer or Defendants, as set out in Mo.Rev.Stat §537.765.

TWENTY-SECOND DEFENSE

Further Defendants aver that any recovery shall be diminished by Plaintiff's use of the product for a purpose not intended by the manufacturer or Defendants, as set out in Mo.Rev.Stat §537.765.

TWENTY-THIRD DEFENSE

Further Defendants aver that any recovery shall be diminished by Plaintiff's use of the product with knowledge of a danger involved in such use with reasonable appreciation of the consequences and the voluntary and unreasonable exposure to that danger, as set out in Mo.Rev.Stat §537.765.

TWENTY-FOURTH DEFENSE

Further Defendants aver that any recovery by Plaintiffs shall be diminished by Plaintiff's unreasonable failure to appreciate the danger involved in the use of the product or the consequences thereof and the unreasonable exposure to that danger, as set out in Mo.Rev.Stat §537.765.

TWENTY-FIFTH DEFENSE

Further Defendants aver that any recovery by Plaintiff shall be diminished by Plaintiff's failure to undertake the precautions a reasonably careful user of the product would take to protect himself against dangers which he would reasonably appreciate under the same or similar circumstances, as set out in Mo.Rev.Stat §537.765.

TWENTY-SIXTH DEFENSE

Further Defendants aver that any recovery by Plaintiff shall be diminished by Plaintiff's failure to mitigate his damages, as set out in Mo.Rev.Stat §537.765.

TWENTY-SEVENTH DEFENSE

Further each Defendant avers that if it is found to be less than 51% at fault, that it is only responsible for the percentage of fault assessed to it, pursuant to Missouri Revised Statute.

TWENTY-EIGHTH DEFENSE

For its further defense, Defendant Buchheit of Herculaneum, Inc. states that it should be dismissed as set out in Mo.Rev.Stat §537.762 because its liability is based solely on its alleged status as a seller of the subject product identified as a Big Dog Climbing Stick model BDLS-20 in the stream of commerce and another Defendant, including the upstream seller, designer and/or manufacturer of the subject product, is properly before the Court and total recovery may be had for Plaintiff's claim from such other Defendant.

RELIANCE ON JURY DEMAND

Defendants Buchheit of Herculaneum, Inc. and Big Dog Treestands, Inc. aver hereby relies upon Plaintiff's Jury Demand.

Respectfully submitted this 29th day of May, 2020.

Respectfully submitted,

EVANS AND DIXON, L.L.C.

By: /s/ Brian R. Shank
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Phone: (314) 621-7755
Fax: (314) 621-3136
bshank@evans-dixon.com

*ATTORNEYS FOR DEFENDANTS
BIG DOG TREESTANDS, INC. AND BUCHHEIT
OF HERCULANEUM, INC.*

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing document has been served on all counsel of record on this 29th day of May, 2020, through the Court's ECF system.

/s/Brian R. Shank

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. D/B/A BIG DOG)
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

**DEFENDANTS WSTR HOLDINGS, INC. AND BUCHHEIT
OF HERCULANEUM, INC.'S ANSWER TO PETITION FOR DAMAGES**

NOW COME Defendants WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC. (hereinafter, "Defendant Big Dog Treestands, Inc.") and BUCHHEIT OF HERCULANEUM, INC., (hereinafter, "Defendant Buchheit of Herculaneum, Inc.") by and through their attorneys, and in response to Plaintiff's Petition state as follows:

COUNT I – STRICT LIABILITY

1. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. lack sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 1; to the extent a response is nonetheless required, the allegations are denied and thus the Plaintiff is left to his proofs.

2. Defendant WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. admits it is an Illinois corporation with its principal place of business in Illinois which sells various hunting products, including a Climbing Stick, Model BDSL-20. The remainder of the paragraph is neither

admitted nor denied; to the extent a response is nonetheless required, the allegations are denied and thus the Plaintiff is left to his proofs.

3. Defendant Buchheit of Herculaneum, Inc. admits it is a Missouri corporation with its principal place of business in Missouri which sells various hunting products, including a Climbing Stick, Model BDSL-20. The remainder of the paragraph is neither admitted nor denied; to the extent a response is nonetheless required, the allegations are denied and thus the Plaintiff is left to his proofs.

4. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. lack sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 4; to the extent a response is nonetheless required, the allegations are denied and thus the Plaintiff is left to his proofs.

5. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc., and deny deny the allegations in paragraph 5. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. further state that the Big Dog Climbing Stick model BDLS-20 was reasonably safe.

6. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. lack sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 6; to the extent a response is nonetheless required, the allegations are denied and thus the Plaintiff is left to his proofs.

7. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. deny the allegations in paragraph 7. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. further state that the Big Dog Climbing Stick model BDLS-20 was reasonably safe.

WHEREFORE Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. request this court enter a judgment of no cause and dismiss this action with prejudice together with costs and attorney fees wrongfully incurred.

COUNT II – STRICT LIABILITY FAILURE TO WARN

8. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. incorporate by reference their response to paragraphs 1-7 of this Petition as if fully set forth under Count 2 herein.

9. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. deny the allegations in paragraph 9. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc., Inc. further state that the Big Dog Climbing Stick model BDLS-20 was reasonably safe.

10. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. deny the allegations in paragraph 10.

11. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. deny the allegations in paragraph 11.

WHEREFORE Defendants request this court enter a judgment of no cause and dismiss this action with prejudice together with costs and attorney fees wrongfully incurred.

COUNT III - NEGLIGENCE

12. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. incorporate by reference their response to paragraphs 1-11 of this Petition as if fully set forth under Count 3 herein.

13. Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. deny the allegations in paragraph 13. Defendants further state that the Big Dog Climbing Stick model BDLS-20 was reasonably safe.

14. Defendants Big Dog Treestands, Inc. and Buchheit of Herculanum, Inc. deny the allegations in paragraph 14. Defendants Big Dog Treestands, Inc. and Buchheit of Herculanum, Inc. further state that the Big Dog Climbing Stick model BDLS-20 was reasonably safe.

15. Defendants Big Dog Treestands, Inc. and Buchheit of Herculanum, Inc. deny the allegations in paragraph 15. Defendants Big Dog Treestands, Inc. and Buchheit of Herculanum, Inc. further state that the Big Dog Climbing Stick model BDLS-20 was reasonably safe.

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SPECIAL AND/OR AFFIRMATIVE DEFENSES

FIRST DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and first defense to Plaintiff's Petition for Damages state that the petition fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and second defense to Plaintiff's Petition for Damages state that the Plaintiff had a duty to mitigate damages and failed to do so.

THIRD DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and third defense to Plaintiff's Petition state that the Plaintiff failed to exercise reasonable care and caution for Plaintiff's own safety in that Plaintiff failed to act as a reasonably prudent person would under the circumstances, failed to take precautions for Plaintiff's own safety, and such conduct was the sole and/or contributing cause of Plaintiff's own injuries and damages alleged.

FOURTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and fourth defense to Plaintiff's Petition state that the Plaintiff was negligent, contributorily negligent, and/or comparatively negligent in the incident in that Plaintiff failed to act as a reasonably prudent person would under the circumstances, failed to take precautions for Plaintiff's own safety and/or in general failed to exercise the reasonable degree of care for the

circumstances then and there existing proximately resulting in the alleged injuries as will be more fully developed prior to the conclusion of discovery and prior to the trial of this matter.

FIFTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and fifth defense to Plaintiff's Petition state that there was intervening and superseding negligence of others including the Plaintiff and others unknown to Defendants at this time such that the injuries or damages suffered by the Plaintiff were caused in whole or in part by the acts or omissions of the Plaintiff, and/or by other non-parties so that the alleged injuries and damages suffered by the Plaintiff were not proximately caused by the acts or omissions of Defendants.

SIXTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and sixth defense to Plaintiff's Petition state that Plaintiff's claims are barred in whole or in part because the comparative fault of Plaintiff is greater than the aggregate fault of persons, whether or not parties to this action.

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Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and seventh defense to Plaintiff's Petition state that Plaintiff seeks to recover for injuries that were caused by an inherent characteristic of the product which is a generic part of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge common to the community.

EIGHTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and eighth defense to Plaintiff's Petition state that Plaintiff's claims are barred, in whole or in part, because Plaintiff assumed an appreciated, known or obvious risk to his own safety.

NINTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and ninth defense to Plaintiff's Petition state that the risk of harm of which Plaintiff complains was open and obvious and/or a matter of common knowledge, or it should have otherwise been aware of the risk and/or that Plaintiff assumed any risk associated with the use of the subject product.

TENTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and tenth defense to Plaintiff's Petition state that the product about which Plaintiff complains was materially altered and/or modified after it left the control of Defendants.

ELEVENTH DEFENSE

Come now Defendants Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. and for their answer and eleventh defense to Plaintiff's Petition state that the product conformed with generally recognized state of the art applicable to the safety of the product at the time the product was designed, manufactured, packaged and labeled.

TWELFTH DEFENSE

Come now Defendants Buchheit of Herculaneum, Inc. and Big Dog Treestands, Inc. and for their answer and twelfth defense to Plaintiff's Petition state that Defendant breached no express or implied warranties pertaining to this product.

THIRTEENTH DEFENSE

Come now Defendants Buchheit of Herculaneum, Inc. and Big Dog Treestands, Inc. and for their answer and thirteenth defense to Plaintiff's Petition state that the Plaintiff's claim is barred because the product complied with applicable governmental or voluntary requirements.

FOURTEENTH DEFENSE

Come now Defendants Buchheit of Herculaneum, Inc. and Big Dog Treestands, Inc. and for their answer and fourteenth defense to Plaintiff's Petition state that the actions of a potential nonparty were the cause, in whole or in part, of any of the Plaintiff's alleged injuries.

FIFTEENTH DEFENSE

Come now Defendants Buchheit of Herculaneum, Inc. and Big Dog Treestands, Inc. and for their answer and fifteenth defense to Plaintiff's Petition state that Defendant reserves the right to amend, delete, add or alter the special and/or affirmative defenses during the course of discovery and trial of this matter.

SIXTEENTH DEFENSE

Come now Defendants Buchheit of Herculaneum, Inc. and Big Dog Treestands, Inc. and for their answer and sixteenth defense to Plaintiff's Petition state that to the extent that discovery supports the same, Defendants assert the defenses of product abuse, produce misuse, and/or production modification.

SEVENTEENTH DEFENSE

Come now Defendants Buchheit of Herculaneum, Inc. and Big Dog Treestands, Inc. and for their answer and seventeenth defense to Plaintiff's Petition state that any warnings given by Defendants were adequate and/or any failure to warn was not the proximate cause of any alleged injury.

EIGHTEENTH DEFENSE

Further Defendants aver that Plaintiff's damages should be assessed based upon the rebuttable presumption of the value of the damages based upon the actual amounts paid to satisfy the costs of the services or materials provided, pursuant to Mo. Rev. Stat. sec. 490.715.5. The dollar amount necessary to satisfy the financial obligation to any of Plaintiff's health care providers represents the value of the medical treatment rendered, and no other amount should be presented to the jury, absent a motion, hearing, and court order to determine the measure of such damages.

NINETEENTH DEFENSE

Further Defendants aver that any verdict rendered and/or judgment entered in this matter on behalf of Plaintiff should be reduced by all applicable settlements with any and all co-defendants, other tort-feasors, and/or insurance carriers or any other person, firm or corporation alleged to be liable for Plaintiff's claimed damages; and Defendants reserve the right of credit or set-off for any amounts paid to, or for settlement or settlements or payment of damages to the plaintiff by any other parties or entities, settling tort-feasors or other non-collateral sources arising out of the subject incident or injuries or damages alleged by Plaintiff, pursuant to R.S.Mo. 537.060.

TWENTIETH DEFENSE

Further Defendants aver that Plaintiff's damages, which are denied by Defendants, were caused in whole or in part by events which preceded or were subsequent to the incident which is the subject of Plaintiff's Petition.

TWENTY-FIRST DEFENSE

Further Defendants aver that any recovery by Plaintiff shall be diminished by Plaintiff's own fault by failing to use the product as reasonably anticipated by the manufacturer or Defendants, as set out in Mo.Rev.Stat §537.765.

TWENTY-SECOND DEFENSE

Further Defendants aver that any recovery shall be diminished by Plaintiff's use of the product for a purpose not intended by the manufacturer or Defendants, as set out in Mo.Rev.Stat §537.765.

TWENTY-THIRD DEFENSE

Further Defendants aver that any recovery shall be diminished by Plaintiff's use of the product with knowledge of a danger involved in such use with reasonable appreciation of the consequences and the voluntary and unreasonable exposure to that danger, as set out in Mo.Rev.Stat §537.765.

TWENTY-FOURTH DEFENSE

Further Defendants aver that any recovery by Plaintiffs shall be diminished by Plaintiff's unreasonable failure to appreciate the danger involved in the use of the product or the consequences thereof and the unreasonable exposure to that danger, as set out in Mo.Rev.Stat §537.765.

TWENTY-FIFTH DEFENSE

Further Defendants aver that any recovery by Plaintiff shall be diminished by Plaintiff's failure to undertake the precautions a reasonably careful user of the product would take to protect himself against dangers which he would reasonably appreciate under the same or similar circumstances, as set out in Mo.Rev.Stat §537.765.

TWENTY-SIXTH DEFENSE

Further Defendants aver that any recovery by Plaintiff shall be diminished by Plaintiff's failure to mitigate his damages, as set out in Mo.Rev.Stat §537.765.

TWENTY-SEVENTH DEFENSE

Further each Defendant avers that if it is found to be less than 51% at fault, that it is only responsible for the percentage of fault assessed to it, pursuant to Missouri Revised Statute.

TWENTY-EIGHTH DEFENSE

Further Big Dog Outdoors, Inc. and Big Dog Tree Stands, Inc., Bucheit of Herculaneum, Inc., and Bucheit Herculaneum, Inc. are improperly identified corporate entities.

TWENTY-NINTH DEFENSE

Further Big Dog Outdoors, Inc. and Big Dog Tree Stands, Inc., Bucheit of Herculaneum, Inc., and Bucheit Herculaneum, Inc. were neither the manufacturers nor distributors of the Big Dog Climbing Stick model BDLS-20 described in Plaintiff's Petition for Damages and had no involvement with placing the climbing stick into the stream of commerce and are improper parties.

RELIANCE ON JURY DEMAND

Defendants Buchheit of Herculaneum, Inc. and Big Dog Treestands, Inc. aver hereby relies upon Plaintiff's Jury Demand.

Respectfully submitted this 19th day of May, 2020.

Respectfully submitted,

EVANS AND DIXON, L.L.C.

By: /s/ Brian R. Shank
Brian R. Shank (#59955)
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211 North Broadway, Ste. 2500
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bshank@evans-dixon.com

*ATTORNEYS FOR DEFENDANTS
BIG DOG TREESTANDS, INC. AND BUCHHEIT
OF HERCULANEUM, INC.*

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing document has been served on all counsel of record on this 19th day of May, 2020, through the Court's ECF system.

/s/Brian R. Shank_____

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. D/B/A BIG DOG)
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

**DEFENDANT BUCHHEIT HERCULANEUM, INC.'S MOTION TO DISMISS
PURSUANT TO MISSOURI REVISED STATUTE 537.762**

NOW COMES Defendant BUCHHEIT OF HERCULANEUM, INC., (hereinafter “Buchheit”), by and through its attorneys, and pursuant to Mo. Rev. Stat. § 537.762, hereby respectfully requests that this Court enter an Order granting Buchheit’s Motion to Dismiss. Specifically, Buchheit requests dismissal of all of Plaintiff’s claims against it under the “innocent seller” statute, R.S.Mo. § 537.762. In support of its motion, Buchheit avers as follows:

1. Section 537.762, R.S.Mo. provides that when a defendant’s liability is based solely upon its status as a seller in the stream of commerce it may be dismissed from a products liability case.

2. Plaintiff has filed a petition against Defendant Buchheit, claiming damages resulting from the use of the allegedly defective climbing stick sold by Defendant Buchheit. (*See Petition attached hereto as **Exhibit A***). Plaintiff alleged that he purchased the subject climbing stick at Buchheit’s store in Herculanum, Missouri. (*See Plaintiff’s Deposition Transcript, attached hereto as **Exhibit B**, at p. 23*).

3. Plaintiff's Petition is in three counts: 1) Strict Liability; 2) Strict Liability Failure to Warn; and 3) Negligence (for defective product). (*See Exhibit A*).

4. Plaintiff alleges under strict products liability that at the time the stick ladder was manufactured, designed, sold and/or distributed by Defendant Buchheit during the course of its business, it was then in a defective condition unreasonably dangerous when put to its reasonably anticipated use. Plaintiff further alleges that as a direct result of this defect with the climbing stick he was injured. (*Id.*).

5. Defendant Buchheit filed its answer to Plaintiff's petition and has denied any liability to plaintiff's therein.

6. Defendant Buchheit is not the manufacturer of the product at issue and was merely a seller in the stream of commerce. (*See Affidavit of P. Jannin, attached hereto as Exhibit C, at ¶ 4-6; see also, Affidavit of T. Royer, attached hereto as Exhibit D, at ¶ 6*).

7. R.S.Mo. 573.762 provides that a defendant whose liability is based solely on its status as a seller in the stream of commerce may be dismissed from a product liability claim so long as another defendant is properly before the court and from whom total recovery may be had for plaintiff's claim.

8. Defendant Buchheit's liability, if any, is based solely on its status as a retailer or product seller in the stream of commerce of the allegedly defective product. (*See Exhibit C*).

9. WSTR Holdings, Inc. d/b/a Big Dog Treestands ("WSTR") is properly before this court and was "upstream" as to Buchheit as the manufacturer/distributor of the subject climbing stick. (*See Exhibit A*).

10. Total recovery may be had for plaintiff's claims from WSTR as they have \$1,000,000 in insurance with The Hartford Insurance Group and \$4,000,000 in insurance with

Starr Surplus Lines Insurance Company. (See *WSTR's Declaration Pages of Liability Insurance*, attached hereto as **Exhibit E**).

11. As a non-manufacturing seller, Buchheit had no control or influence over the design, manufacture, construction, warnings, instructions or quality of the subject climbing stick. (See **Exhibit C**, at ¶ 6-14).

12. Petrina Jannin has submitted an affidavit, a copy of which is attached hereto as "**Exhibit C**", pursuant to R.S.Mo. 537.762 which was made under oath and states that Patrina Jannin, as Safety Manager of Buchheit, is aware of no facts or circumstances upon which a verdict might be reached against it other than its status as a seller in the stream of commerce. (See **Exhibit C**, at ¶ 18).

13. Moreover, Plaintiff has presented no evidence to establish that Buchheit did anything other than sell the subject stick ladder at issue in this case.

14. Based on R.S.Mo. 537.762, the facts set forth herein, and the facts set forth in the attached exhibits and memorandum in support, this court should dismiss the claims against Defendant Buchheit from this matter with prejudice.

WHEREFORE, Defendant BUCHHEIT OF HERCULANEUM, INC. prays that it be dismissed pursuant to R.S.Mo. 537.762 and for such other relief as the court may deem appropriate.

Respectfully submitted this 10th day of June, 2020.

Respectfully submitted,

EVANS AND DIXON, L.L.C.

By: /s/ Brian R. Shank
Brian R. Shank (#59955)
Metropolitan Square
211 North Broadway, Ste. 2500
St. Louis, MO 63102
Phone: (314) 621-7755

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bshank@evans-dixon.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 10th day of June, 2020.

/s/Brian R. Shank_____

4467649

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

BEN SCOFIELD)	
A Missouri resident)	
)	
Plaintiff)	
)	
vs.	)	Cause Number:
)	
	)	Division:
WSTR HOLDINGS, INC. D/B/A BIG DOG)	
TREESTANDS, INC.)	
A Illinois Corporation)	
	)	JURY TRIAL DEMANDED
HOLD SERVICE:)	
Ketra A. Mytech)	
1230 W. Candletree Drive., Suite A)	
Peoria, IL 61614)	
)	
And)	
)	
BUCHHEIT OF HERCULANEUM, INC.,)	
A Missouri Corporation)	
)	
HOLD SERVICE:)	
Reid Willen)	
33 PCR 53)	
Perryville, MO 63775)	
)	
Defendants.)	

PETITION
COUNT I – STRICT LIABILITY

Comes now plaintiff, Ben Scofield and for Count I of his cause of action against defendants WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. and Buchheit of Herculanum, Inc. and states as follows:

1. Plaintiff Ben Scofield is now and was at all times herein mentioned a resident and citizen of the State of Missouri. Plaintiff's injury as more fully described below was sustained in

Jefferson County, State of Missouri therefore jurisdiction and venue are proper in the Circuit Court of Jefferson County.

2. Defendant WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. is and was at all times herein mentioned a duly organized and existing corporation under the laws of the state of Illinois and was doing business designing, manufacturing, and selling treestands for deer hunting including the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 (hereafter referred to as the treestand) involved in this incident.

3. Defendant Buchheit of Herculaneum, Inc. is and was at all times herein mentioned a corporation duly organized and existing under the laws of the State of Missouri and was doing business selling treestands for deer hunting including the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 involved in this incident.

4. On or about August 27, 2015 plaintiff was installing a Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 on a tree on property in Ware, Missouri off Brownfield Road in preparation for deer hunting. As plaintiff was at the top of the treestand when finishing the installation, he grabbed the top section of the treestand to steady his way down at which time the treestand snapped and caused him to fall.

5. At the time the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 was designed, manufactured, and sold by defendants WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc. the climbing stick treestand was then in a defective condition and unreasonably dangerous when put to a reasonably anticipated use in that the climbing stick treestand was insufficiently designed and/or manufactured so that it would hold plaintiff, would not break when used by plaintiff and prevent plaintiff from falling and sustaining severe injuries.

6. The Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 referred to above was used by plaintiff in a manner reasonably anticipated by defendants.

7. That as a direct and proximate result of the defective and unreasonably dangerous condition of the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 designed, manufactured, and sold by defendants plaintiff has been caused to sustain the following damages to wit: plaintiff sustained injuries to his back, right heel resulting in a fracture, burst fractures at T11 through L3 , and thoracic and lumbar compression fractures which required surgical implantation of rods and screws in his back; plaintiff has incurred medical expenses to date in an amount in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and continues to incur medical expenses for continuing medical care; plaintiff has lost wages in an amount to be determined and his ability to work, labor and enjoy life has been significantly impaired and diminished.

WHEREFORE plaintiff prays judgment against defendants, and each of them, in an amount which is fair and reasonable in excess of \$25,000.00 plus any further relief the Court deems just and proper.

COUNT II – STRICT LIABILITY FAILURE TO WARN

Comes now plaintiff, Ben Scofield and for Count II of his cause of action against defendants WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. and Buchheit of Herculeaneum, Inc. and states as follows:

8. Plaintiff reincorporates and re-alleges paragraphs 1-7 of his petition as fully set forth herein.

9. The above mentioned Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 was defective and unreasonably dangerous at the time it was designed, manufactured and sold by

defendants in that the climbing stick was insufficiently designed and/or manufactured so that it would not break when used by plaintiff, would hold plaintiff when climbing and would therefore prevent plaintiff from falling and sustaining severe injuries.

10. That defendants and each of them did not give adequate warning of the dangerous condition of the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 as aforesaid.

11. That plaintiff was using the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 in a manner reasonably anticipated by defendants and each of them and as a direct and proximate result of the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 being sold without an adequate warning, plaintiff sustained damages as set forth in paragraph 7 above.

WHEREFORE plaintiff prays judgment against defendants, and each of them, in an amount which is fair and reasonable in excess of \$25,000.00 plus any further relief the Court deems just and proper.

COUNT III – NEGLIGENCE

Comes now plaintiff, Ben Scofield and for Count III of his cause of action against defendants WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. and Buchheit of Herculanum, Inc. and states as follows:

12. Plaintiff reincorporates and re-alleges paragraphs 1-11 of his petition as fully set forth herein.

13. The above mentioned Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 was defective and unreasonably dangerous at the time it was designed, manufactured and sold by defendants in that the climbing stick was insufficiently designed and/or manufactured so that it would not break when used by plaintiff, would hold plaintiff when climbing and would therefore prevent plaintiff from falling and sustaining severe injuries.

14. That defendants knew or should have known of the dangerous condition of the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 and had no reason to believe that plaintiff would realize the dangerous condition.

15. That Defendants failed to use ordinary care to either design the Big Dog 20-foot Hot Foot Climbing Stick BDSL-20 to be reasonably safe or defendants failed to use ordinary care to warn plaintiff and others of the risk and hazardous condition of the Big Dog 20- foot Hot Foot Climbing Stick BDSL-20 as aforesaid and as a direct and proximate result of defendants' negligence plaintiff has sustained damages as set forth in paragraph 7 above.

WHEREFORE plaintiff prays judgment against defendants, and each of them, in an amount which is fair and reasonable in excess of \$25,000.00 plus any further relief the Court deems just and proper.

LAW OFFICE OF DANIEL T. RYAN, LLC

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Transcript of the Testimony of

Benjamin Scofield

January 5, 2018

Ben Scofield v. Big Dog Outdoors

FORTZ
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Ben Scofield v. Big Dog Outdoors
Benjamin Scofield 1/5/2018**Job 5899**

1 (Pages 1 to 4)

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

)

)

Plaintiff,

)

)

vs.

) Cause No. 17JE-CC00227

)

)

BIG DOG OUTDOORS, INC., and)

BUCHHEIT OF HERCULANEUM,

)

INC.,

)

)

Defendants.

)

VIDEO-RECORDED DEPOSITION OF WITNESS, BENJAMIN SCOFIELD, produced, sworn and examined on the 5th day of January, 2018, commencing at approximately 10:07 A.M. at the Law Office of Daniel T. Ryan, 3008 Sutton Boulevard, Maplewood, Missouri, before BETH O. ZINK, a Registered Professional Reporter, Missouri Certified Court Reporter, Illinois Certified Shorthand Reporter and Notary Public, in a certain cause now pending in the Circuit Court of Jefferson County, State of Missouri, wherein BEN SCOFIELD is Plaintiff and BIG DOG OUTDOORS, INC., et al. are Defendants.

JOB NUMBER: 5899

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Color copy of photo depicting subject climbing stick

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Exhibit 15

Color copies of photos taken upon retrieval, (A-J)

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Exhibit 16

Color copy of photo depicting DVD - Treestand Safety

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Exhibit 17

Color copy of photo depicting DVD - Hunting Strategies

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Exhibit 18

Color copy of photo depicting climbing stick

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Exhibit 19

Color copy of photo depicting warning tag, Model Year 2014

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Exhibit 20

Color copy of photo depicting climbing stick, close-up

Exhibit 21

Color copy of photo by Plaintiff depicting device in tree

Exhibit 22

Color copy of photo by Plaintiff depicting scene

Exhibit 23

Color copy of photo by Plaintiff depicting climbing stick on tree

Exhibit 24

Color copy of photo by Plaintiff depicting device on tree

Exhibit 25

Color copy of photo by Plaintiff depicting device on tree

(Exhibits attached to original and copy of transcript.)

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By Mr. Karfis

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Color copy of photo depicting Gorilla vest harness

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Color copy of photo depicting Gorilla vest harness, close-up

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Gorilla warning label, 5/2012

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Color copy of photo depicting Straps for harness

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Exhibit 8

Color copy of photo depicting 2 sets of straps for harness

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Exhibit 9

Color copy of photo depicting Strap with orange stitching

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Exhibit 10

Color copy of photo depicting hook with ratchet strap

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Exhibit 11

Color Copy of photo depicting subject climbing stick, bent

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Exhibit 12

Color copy of photo depicting Subject climbing stick, bent

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Exhibit 13

Color copy of photo depicting close-up of climbing stick

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APPEARANCES

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FORTZ
Legal

Exhibit B

Ben Scofield v. Big Dog Outdoors
Benjamin Scofield 1/5/2018**Job 5899**

2 (Pages 5 to 8)

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<p style="text-align: right;">5</p> <p>1 IT IS HEREBY STIPULATED AND AGREED, by and between</p> <p>2 counsel for the Plaintiff and counsel for the Defendants,</p> <p>3 that this deposition may be taken in shorthand by Beth O.</p> <p>4 Zink, a notary public and shorthand reporter, and</p> <p>5 afterwards transcribed into typewriting; and the signature</p> <p>6 of the witness is expressly waived.</p> <p>7 (Whereupon, the deposition commenced at</p> <p>8 approximately 10:07 A.M.)</p> <p>9 * * * * *</p> <p>10 VIDEOGRAPHER: We're now on the record.</p> <p>11 Today's date is January 5th, 2018. The time is</p> <p>12 approximately 10:07 A.M. This is the videotaped</p> <p>13 deposition of Ben Scofield in the matter of Ben Scofield</p> <p>14 versus Big Dog Outdoors, Incorporated, et al., Case Number</p> <p>15 17JE-CC00227 in the Circuit Court for the 23rd Judicial</p> <p>16 Circuit, Jefferson County, Missouri.</p> <p>17 This deposition is being held at the Law</p> <p>18 Office of Daniel T. Ryan, 3008 Sutton Boulevard, Suite</p> <p>19 100, Maplewood, Missouri 63143. The reporter's name is</p> <p>20 Beth Zink. My name is Taedra Hickham. I'm the legal</p> <p>21 videographer and we're with Fortz Legal. Would the</p> <p>22 attorneys present please introduce themselves.</p> <p>23 MR. RYAN: Dan Ryan for plaintiff.</p> <p>24 MR. KARFIS: And Milton Karfis on behalf of</p> <p>25 the Defendants.</p>	<p style="text-align: right;">7</p> <p>1 if --</p> <p>2 A. All right.</p> <p>3 Q. -- if you give an uh-huh or a nod, okay?</p> <p>4 Also, today I'll be asking a number of questions that go</p> <p>5 back, you know, a couple years ago to your accident,</p> <p>6 questions about your medical history. Some things you may</p> <p>7 not recall. This isn't a memory test today. If you</p> <p>8 simply don't know an answer, let me know, if you don't</p> <p>9 recall, for whatever reason, but if you do give me an</p> <p>10 answer, I'll assume you understood my question.</p> <p>11 A. Okay.</p> <p>12 Q. Okay? And I do ask bad question from time to</p> <p>13 time, so if you don't understand the question or it</p> <p>14 doesn't make sense to you, ask me to rephrase it. I'll be</p> <p>15 glad to do that.</p> <p>16 A. All right.</p> <p>17 Q. Also, it's a very common practice, when people</p> <p>18 are conversing, that people interrupt each other when</p> <p>19 they're asking questions because you know what question</p> <p>20 I'm going to ask before I complete it. So I'm asking you</p> <p>21 as a courtesy for the court reporter here today, mostly</p> <p>22 her, and to make a clean record, is if I ask you a</p> <p>23 question, let me finish my question, even if you know what</p> <p>24 I'm getting at, and then when you start answering the</p> <p>25 question, I will give you the same courtesy and not</p>
<p style="text-align: right;">6</p> <p>1 VIDEOGRAPHER: And would the court reporter</p> <p>2 please swear in the witness.</p> <p>3 (Whereupon, the witness was sworn.)</p> <p>4 * * * * *</p> <p>5 BENJAMIN SCOFIELD,</p> <p>6 produced, sworn and examined on behalf of the Defendants,</p> <p>7 deposes and says:</p> <p>8 DIRECT EXAMINATION,</p> <p>9 QUESTIONS BY MR. KARFIS:</p> <p>10 Q. Sir, can you please state your full name for</p> <p>11 the record.</p> <p>12 A. Benjamin Scofield.</p> <p>13 Q. Mr. Scofield, this is the time and date for</p> <p>14 your deposition in this case. Have you ever given a</p> <p>15 deposition before?</p> <p>16 A. No.</p> <p>17 Q. Okay. Hopefully your attorney went over some</p> <p>18 ground rules with you. Basically, obviously, I'm here</p> <p>19 asking questions today. It's being videotaped also, but</p> <p>20 it's still important that you give verbal answers. You</p> <p>21 can't nod your head or shake because --</p> <p>22 A. Okay.</p> <p>23 Q. -- Beth, the court reporter, who's taking down</p> <p>24 everything you're saying, can't take down a shake or a</p> <p>25 nod, okay? It's very common to do that. I'll remind you</p>	<p style="text-align: right;">8</p> <p>1 interrupt your answer.</p> <p>2 A. Okay.</p> <p>3 Q. Okay? I don't anticipate being here all day</p> <p>4 today, by any means, so I don't think you'll need a break,</p> <p>5 but if you need a break, water break, bathroom break or</p> <p>6 whatever, stretch, let me know, I'm glad to do that.</p> <p>7 A. All right.</p> <p>8 Q. However, if there's a question pending, I</p> <p>9 would ask you to answer that question before we take a</p> <p>10 break.</p> <p>11 A. All right.</p> <p>12 Q. Okay. What's your date of birth?</p> <p>13 A. Redacted .</p> <p>14 Q. And I'm not going to state on the record,</p> <p>15 because of privacy protection principles, but your social</p> <p>16 security number was referenced in your answers to</p> <p>17 interrogatories, and I'm just going to show this to you.</p> <p>18 I'm not going to have you read the number, but just</p> <p>19 confirm that in your answers to interrogatories the</p> <p>20 correct social security number was provided.</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. So answer to Number 1 to your answers</p> <p>23 to interrogatories has your correct social security</p> <p>24 number?</p> <p>25 A. Right.</p>

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Benjamin Scofield 1/5/2018

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<p style="text-align: right;">9</p> <p>1 Q. And what's your -- what is your current 2 address? 3 A. Redacted 4 Q. And how long have you resided there? 5 A. Since summer of 2016. 6 Q. Okay. And are you married? 7 A. Yes. 8 Q. Okay. How long have you been married for? 9 A. Since Redacted 10 Q. Okay. Good you got the date right. Any 11 children? 12 A. Yeah, three kids. 13 Q. How old are they? 14 A. Redacted 15 Q. You've got your hands full. 16 A. Yeah. 17 Q. What's your educational background? 18 A. High school, a tiny bit of college. 19 Q. Are you left or right-hand dominant? 20 A. Right-handed. 21 Q. And do you wear corrective lenses? 22 A. No. 23 Q. How tall are you? 24 A. About 5'10". 25 Q. How much do you weigh?</p>	<p style="text-align: right;">11</p> <p>1 sit at my desk for eight hours a day, so -- because a 2 portion of my job is entrepreneurial, so I have clients, 3 but then I have my own stuff that we're launching. The 4 ongoing impact is I don't really have enough time in my 5 day to service my clients and then everything in the 6 entrepreneurial side is pushed off until whenever I can, 7 you know, find the time, just because I can't sit in a 8 chair for that long. 9 MR. KARFIS: Okay. So Counsel, are you 10 claiming any lost wages? I mean -- 11 MR. RYAN: No, it's more -- 12 A. That's all future stuff. 13 MR. RYAN: -- non-economic damage kind of 14 stuff. 15 MR. KARFIS: Okay. 16 MR. RYAN: Because he is self-employed. 17 Q. Well, it saves a lot of questions. 18 A. Okay. 19 Q. Okay. But you currently own a company, is it 20 Smart Designs Development, Inc. which is a computer 21 software development company? 22 A. Yes. 23 Q. Okay. And that's -- is that kind of the area 24 you've been in since really graduating high school, 25 computer software development or computers?</p>
<p style="text-align: right;">10</p> <p>1 A. About 175. 2 Q. Back in August of 2015 when this accident 3 occurred, were you weighing about the same? 4 A. Yes. 5 Q. Any military history? 6 A. No. 7 MR. KARFIS: And my understanding, Counsel, is 8 that you're not making any lost wage claim; is that 9 correct? 10 MR. RYAN: That's correct. 11 MR. KARFIS: Okay. And I'm not going to go -- 12 MR. RYAN: He can explain to you why. 13 Q. Yeah. From review of your discovery responses 14 and I understand that you work -- you have a company that 15 does computer software development? 16 A. Yes. 17 Q. Okay. And obviously you sustained certain 18 injuries, I think your back and your heel, your right 19 heel? 20 A. Uh-huh. 21 Q. Does that interfere with your ability to earn 22 wages? 23 A. Well, with the way that my job works, I didn't 24 miss any deadlines or -- so stuff basically just got put 25 off. But the ongoing injuries, yeah, you know, I can't</p>	<p style="text-align: right;">12</p> <p>1 A. Computers, yes; software development, 2 full-time since about 2011. 3 Q. Okay. And I noticed you said you don't have 4 any post high school specialized education. Computers are 5 something you've picked up over the years or -- 6 A. Yeah, self-taught guy. 7 Q. Now, I understand in this case you are 8 claiming a back injury which you had I think a spinal 9 fusion or had some rods and -- 10 A. Yes, I have, yeah, some metal in the back, 11 yeah. 12 Q. And then you also injured your right heel? 13 A. Yeah. 14 Q. Were there any other injuries you're claiming 15 from this fall? 16 A. No. 17 Q. And the right heel, has that resolved? 18 A. It had been, and then it flared up a couple 19 weeks ago. 20 Q. Was that due to an injury or -- 21 A. Exertion, I think. It was just going through, 22 walking through a park. 23 Q. And of course I have your medical records. I 24 don't think I have all of them, but I have some of them, 25 but I understand the nature of your injury. So the right</p>

Ben Scofield v. Big Dog Outdoors
Benjamin Scofield 1/5/2018

Job 5899

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<p style="text-align: right;">13</p> <p>1 heel, I understand, was conservatively treated; in other 2 words, there was no surgery -- 3 A. No. 4 Q. -- no cast? 5 A. Correct. 6 Q. You were given a walking boot? 7 A. A walking boot, yeah. 8 Q. And it let the heel heal on its own literally? 9 A. Well, they never took additional x-rays or 10 anything like that, but what they had said at the time was 11 that there was a bone chip. And then as far as the 12 resolution, they just kind of kept me in the boot for X 13 amount of time and then took it off and asked me how it 14 felt. 15 Q. And when is the last time you saw any doctor 16 for your right heel injury? 17 A. For the right heel, I want to say I believe it 18 would have been about two or three weeks after I got out 19 of the hospital. 20 Q. Okay. So since -- 21 A. I'm not certain of that, though. 22 Q. I understand. This isn't a memory test. I do 23 have some of your medical records -- 24 A. Yeah. 25 Q. -- and I'll also try and get the --</p>	<p style="text-align: right;">15</p> <p>1 Q. And what was your understanding of the nature 2 of that surgery? 3 A. They removed the fragments of L1 and then put 4 metal in to keep the spacing, and the metal is attached to 5 two vertebrae above and two vertebrae below, so there's 6 like five vertebrae that are immobilized. 7 Q. And is that hardware still in your back? 8 A. Yeah, it's permanent. 9 Q. Did you have any other medical procedures for 10 your back other than the one -- that one you had the day 11 after? 12 A. Procedures, no. 13 Q. Yeah. 14 A. Like not surgical procedures. I mean there 15 was removing of a stent, removing of staples and stuff 16 like that. 17 Q. Correct. And that surgery occurred a day 18 after your fall on August 28, 2015? 19 A. Yes. 20 Q. And what hospital was that? I've seen 21 reference to Mercy Hospital St. Louis. 22 A. Yeah, St. John's Mercy or something like that. 23 Q. Okay. And I understand you were transported 24 in an ambulance to the hospital. Were you transferred 25 directly to Mercy Hospital?</p>
<p style="text-align: right;">14</p> <p>1 A. There was one follow-up visit, so -- 2 Q. Okay. Okay. So after you get out of the 3 hospital, you have one follow-up visit with your right 4 heel and that's the last date of any treatment? 5 A. Yes, for the heel. 6 Q. Yeah. And I assume -- you said you had a 7 flare-up recently, but over the last two and a half years, 8 have you had any other additional problems with your right 9 heel? 10 A. No. Exertion like that, no. 11 Q. And what were you doing then? 12 A. I was just walking around the park. 13 Q. And did you see a doctor as a result of that 14 exertion from the park? 15 A. No, I let it go on for a few days and it 16 stopped. 17 Q. I know you're not a doctor, but what is your 18 understanding, what was your back injury? 19 A. If I recall correctly, they said that it was a 20 burst fracture of L1, I think. So the vertebra shattered 21 into a bunch of pieces. 22 Q. Okay. And at some point you had -- you went 23 to the hospital as a result of this fall and you had some 24 surgery for your back injury? 25 A. Yes.</p>	<p style="text-align: right;">16</p> <p>1 A. Yeah, I asked to go there, yeah. 2 Q. Okay. And then you had your procedure and did 3 you also have your follow-ups there also? 4 A. Yeah. Her office, the neurosurgeon's office, 5 is in the building, yeah. 6 Q. And what was that doctor's name? 7 A. Quinn, Dr. Quinn. 8 Q. Did you have any other medical treatment? I 9 understand you had some follow-up, I'm sure, and some 10 physical therapy and whatnot after the surgery. Did you 11 see any other doctors besides Dr. Quinn and any other 12 doctors at Mercy Hospital in the ER for this back injury? 13 A. No, I don't believe so. 14 Q. When is the last time you saw Dr. Quinn for 15 your back? 16 A. I don't recall specifically. We -- I think we 17 had six months of follow-ups once a month maybe, maybe 18 less than that. I don't recall. There was a prescribed 19 number of follow-up visits and I had to come into town 20 from Kansas City to do the last one or last two, so that 21 would have gone into the summer of 2016, so I want to say 22 about six months maybe of monthly visits. 23 Q. So six months after August of 2015 would be 24 March/April 2016? 25 A. No, that wouldn't have been enough, because I</p>

Ben Scofield v. Big Dog Outdoors
Benjamin Scofield 1/5/2018

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<p style="text-align: right;">17</p> <p>1 was already in Kansas City. Maybe it was nine months of 2 visits. She didn't actually, that I recall, didn't 3 actually lay out a plan ahead of time. It was see you 4 next month, see you next month until finally she said 5 don't have to see you anymore. 6 Q. Okay. And you recall that being approximately 7 nine months after the fall, summer of 2016? 8 A. I'm just dating it back to having been in 9 Kansas City, so I moved to Kansas City in the summer, so 10 it was sometime after that. 11 Q. Okay. And have you seen any other doctors for 12 your back injury since approximately the summer of 2016? 13 A. No. 14 Q. How is your back today? 15 A. Complicated. 16 Q. Okay. What do you mean by that? 17 A. I can't really pick much up. If it's in the 18 right position and in the right height, I can use my legs, 19 but I can't really lean over. You know, too much exertion 20 causes a lot of pain when I lay down later at night and 21 then there's a long period of -- well, the way I've always 22 described it to people when they ask is like when you run 23 too much and then your legs get kind of jelly-like, that's 24 kind of how my back feels for one or two hours after I lay 25 down. So, you know, pain of various kinds for various</p>	<p style="text-align: right;">19</p> <p>1 A. The last advice that I remember getting from 2 her, or recommendations, were that I basically just had to 3 play it by ear and really understand my back and what it 4 was capable of doing and not capable of doing, so not like 5 medical restrictions from a doctor. 6 I've just, over the past whatever one and a 7 half years or whatever it is, I've learned what I can and 8 can't do, because one thing either causes an actual strain 9 or just a lot more pain later on in the day kind of a 10 thing. 11 Q. So a doctor has not given you specific medical 12 restriction, physical restriction, but told you kind of be 13 your own judge of what you can and cannot do? 14 A. Yeah. 15 Q. Any future plans to seek any medical treatment 16 for either your back or your heel from injuries from this 17 fall? 18 A. From physical therapist, yeah. 19 Q. Have you had any physical therapy since the 20 summer of 2016? 21 A. No. She said she didn't have to -- I didn't 22 need to go. She said I could if I wanted to, but 23 basically just getting back into routine would get me back 24 to where I could get. 25 Q. Has your back improved since 2016, the summer</p>
<p style="text-align: right;">18</p> <p>1 reasons, anywhere from just plain old soreness from 2 sitting in a chair to over-exerting, and then there's just 3 general lack of strength, I guess, in that area. I can't 4 use that part of my back, so I guess the muscles there 5 aren't getting exercised, so yeah, complicated for all 6 kinds of reasons. Just depends on the topic. 7 Q. Are you currently taking any medications for 8 pain or anything for your back? 9 A. No. 10 Q. Anything for your heel? 11 A. No. I mean I -- well, no prescription 12 medications. I will occasionally take pain killers for my 13 back if I've overdone it, but because it's ongoing, I 14 just, because of concerns about being on pain medicine 15 non-stop, I try not to. 16 Q. Is this a prescription medication or like an 17 aspirin? 18 A. No, no, no. Yeah, Aleve actually normally, 19 yeah. 20 Q. Okay. Currently are you on any medical 21 restrictions? 22 A. I don't know how to define medical 23 restrictions. Like has the doctor told me not to do 24 anything? 25 Q. Yeah.</p>	<p style="text-align: right;">20</p> <p>1 when you quit seeing Dr. Quinn? 2 A. Oh, since I quit seen Dr. Quinn, no. It's 3 been about the same. Yeah, it plateaued. 4 Q. But you have no future concrete plans to see 5 any doctors for your back in the future? 6 A. Based on the condition, no. I just understand 7 it to be par for the course right now. 8 Q. And we've covered all the injuries from your 9 fall from the stick ladder? 10 A. Yeah. 11 Q. How was your health prior to your fall? 12 A. Fine, no health issues. 13 Q. Any prior back injuries? 14 A. No. 15 Q. Any prior feet injuries? 16 A. No. 17 Q. Any prior significant injuries resulting in 18 hospitalization from automobile accident -- 19 A. No. 20 Q. -- or fall? 21 A. No. 22 Q. Were you taking any medications at the time of 23 your fall? 24 A. No. 25 Q. And I'm not going to keep on saying August</p>

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<p style="text-align: right;">21</p> <p>1 27th of 2015, but if I say the date of your fall, we agree 2 that's the date? 3 A. August 27, 2015. 4 Q. Yeah. 5 A. Yeah, okay. 6 Q. And when you fell, you were self-employed with 7 your own company? 8 A. Yes. 9 Q. Any prior history of blacking out, fear of 10 heights, vertigo, anything like that? 11 A. No. 12 Q. Have you ever blacked out before? 13 A. No. 14 Q. Have you ever filed any litigation before? 15 A. No. 16 Q. Are you currently still hunting? 17 A. Yes. Differently, but yes. 18 Q. Are you on the ground now or -- 19 A. Yeah. 20 Q. Okay. Are you using rifles, bows or -- 21 A. I had to switch to a crossbow, one with what 22 they call an old man crank. It's got like a little 23 fishing reel thing on the side to help you cock it back, 24 and a rifle occasionally, yeah. 25 Q. Did you hunt this last season, 2017?</p>	<p style="text-align: right;">23</p> <p>1 A. I've both used. The landowner on the property 2 where I fell has a couple of homemade ones, but those are 3 kind of his. I've been in them a few times, but for the 4 most part, I used store-bought. 5 Q. And obviously in 2015 you had the Big Dog 6 climbing stick, the BDL 20 climbing stick, correct? 7 A. I don't remember the model number off the top 8 of my head, but -- 9 Q. And you apparently, according to discovery, 10 you had purchased that approximately a year before the 11 accident? 12 A. I believe so, yeah. 13 Q. And where did you buy that from? 14 A. Buchheit's in Herculaneum, Missouri. 15 Q. And I think we asked this, but do you have a 16 proof of purchase, any literature that came with the 17 purchase? 18 A. I don't. 19 Q. How about any of the written warnings or 20 instructions that came with the climbing stick, do you 21 have any of that stuff? 22 A. Only ones that might still be attached to it. 23 Q. Okay. So any labels that were attached to any 24 of the straps? 25 A. Well, Dan has what I have left of the stand,</p>
<p style="text-align: right;">22</p> <p>1 A. I did. 2 Q. Did you get anything? 3 A. Yes, I did. I got a doe. Yeah, sorry. It 4 took a long time, I had to remember, yeah. 5 Q. If it was a 20-point, I'm sure you would have 6 remembered that. 7 A. Yeah, exactly. 8 Q. How long have you been hunting for? 9 A. I didn't start hunting until I was about 20 or 10 21. 11 Q. And you're approximately 37 right now? 12 A. Yes. 13 Q. So you've been hunting for about 15, 16 years? 14 A. Uh-huh. 15 Q. Yes? 16 A. Yes. Sorry. 17 Q. And when you hunt, I'm talking prior to your 18 accident, would you use commercially manufactured tree 19 stands? 20 A. Yes. 21 Q. And when I say commercially manufactured, the 22 kind, the metal ones you go to the store and buy -- 23 A. Right. 24 Q. -- as opposed to homemade ones you might build 25 out at --</p>	<p style="text-align: right;">24</p> <p>1 yeah. 2 Q. Okay. 3 A. And I think there's one warning on there, if I 4 recall. I think I've seen pictures of it floating around. 5 Q. Okay. Now, also on the day of your incident 6 you were also utilizing another, a Big Dog hang-on tree 7 stand you were attempting to hang? 8 A. Yes, there was one with me. I hadn't done 9 anything with it. 10 Q. Okay. It was still on the ground? 11 A. Yeah. 12 Q. Okay. Did you buy that at the same time you 13 bought the climbing stick? 14 A. I don't remember. 15 Q. Do you remember where you bought it from? 16 A. Almost always from Buchheit's, because they 17 would go on sale together. 18 Q. Okay. 19 A. Or at the same time, and I could purchase them 20 together, so -- 21 Q. And the hang-on Big Dog tree stand there, you 22 were going to try to install the day of your accident -- 23 A. Uh-huh. 24 Q. -- do you still have that? 25 A. The rest of the pieces?</p>

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7 (Pages 25 to 28)

<p style="text-align: right;">25</p> <p>1 Q. Of the -- I'm talking the tree stand, not --</p> <p>2 A. Oh.</p> <p>3 Q. Not the climbing stick.</p> <p>4 A. No. My wife made me get rid of it all.</p> <p>5 Q. Okay.</p> <p>6 A. Like you said, I hunt from the ground now,</p> <p>7 so --</p> <p>8 Q. And so the Big Dog tree stand that was on the</p> <p>9 base of the tree after the accident that you hadn't</p> <p>10 attempted to install at that point, you said you believe</p> <p>11 you purchased it around 2014? Do you know approximately</p> <p>12 when you purchased it?</p> <p>13 A. The tree stand itself?</p> <p>14 Q. Yeah.</p> <p>15 A. No, I don't know.</p> <p>16 MR. RYAN: For the uninitiated, when you guys</p> <p>17 start talking about tree stand, you mean the platform,</p> <p>18 right, I guess?</p> <p>19 A. Yes, the platform.</p> <p>20 MR. KARFIS: Yeah. The climbing stick is the</p> <p>21 metal stick ladder.</p> <p>22 MR. RYAN: So we'll call that climbing stick,</p> <p>23 and that thing --</p> <p>24 MR. KARFIS: That's fine.</p> <p>25 MR. RYAN: -- tree stand.</p>	<p style="text-align: right;">27</p> <p>1 you don't know?</p> <p>2 A. I don't know, no.</p> <p>3 Q. Also on the date of the fall you also had a</p> <p>4 Gorilla full-body safety harness you used?</p> <p>5 A. Full body, it was -- I think they call them</p> <p>6 four point or something like that, yeah.</p> <p>7 Q. Sure. Gorilla?</p> <p>8 A. Yeah, Gorilla. Yes.</p> <p>9 Q. And do you recall where you purchased that</p> <p>10 from?</p> <p>11 A. Cabela's.</p> <p>12 Q. Cabela's, okay. Do you remember when you</p> <p>13 purchased that?</p> <p>14 A. Early 2012.</p> <p>15 Q. Other than those three articles, did you own</p> <p>16 any other hunting equipment? I'm talking tree stands or</p> <p>17 harnesses, anything like that.</p> <p>18 A. Own at all?</p> <p>19 Q. Yeah.</p> <p>20 A. Anywhere?</p> <p>21 Q. Sure.</p> <p>22 A. Yeah, yeah.</p> <p>23 Q. How many other -- you understand there's tree</p> <p>24 stands, there's ladder stands --</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">26</p> <p>1 MR. KARFIS: The hang-on tree stand.</p> <p>2 A. Yeah.</p> <p>3 MR. RYAN: I get you.</p> <p>4 Q. But it was definitely a Big Dog tree stand</p> <p>5 hang-on?</p> <p>6 A. I don't recall if it was definitely a Big Dog</p> <p>7 tree stand. I would say 80 to 90 percent of the ones I</p> <p>8 had on the farm were.</p> <p>9 Q. Do you recall the model of the tree stand?</p> <p>10 A. No.</p> <p>11 Q. Okay. I'm going to show you and represent to</p> <p>12 you that based on the photographs I've seen of -- there's</p> <p>13 a couple photographs that depict the tree stand at the</p> <p>14 site of the fall that were taken, I think, after your</p> <p>15 friends came to retrieve the stand, and I'm going to show</p> <p>16 you what, based on my client's interpretation of the</p> <p>17 photographs, it was called a Tomcat hang-on Big Dog tree</p> <p>18 stand. Do you know if that was the tree stand you had; do</p> <p>19 you have any idea one way or the other?</p> <p>20 A. No, not based on the name.</p> <p>21 Q. Okay. And this is a photograph in the upper</p> <p>22 left corner on Exhibit 1. Do you know, does that look</p> <p>23 similar to --</p> <p>24 A. It does look similar.</p> <p>25 Q. Okay. Whether that was the same model or not,</p>	<p style="text-align: right;">28</p> <p>1 Q. -- there's climbers, there's hang-ons, there's</p> <p>2 tripods.</p> <p>3 A. Yeah.</p> <p>4 Q. Did you own a number of different kinds?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Let's start with hang-ons. This is,</p> <p>7 we'll say August of 2015, how many other hang-on tree</p> <p>8 stands did you own?</p> <p>9 A. About five.</p> <p>10 Q. Do you recall the manufacturer of any of</p> <p>11 those? Were those other Big Dog --</p> <p>12 A. Most of them would have been Big Dog, yes.</p> <p>13 Q. Okay. And those five that you owned, do you</p> <p>14 recall approximately when you purchased those? We're</p> <p>15 talking -- this is 2015. Would they have been purchased</p> <p>16 in the five years before that?</p> <p>17 A. Maybe one a year for the previous two or three</p> <p>18 years, but a couple of years probably two -- you know, two</p> <p>19 in one year.</p> <p>20 Q. Okay. So the five you owned, they were</p> <p>21 probably purchased 2012, 13, 14?</p> <p>22 A. Thereabouts, yeah.</p> <p>23 Q. And you generally purchased Big Dog hang-on</p> <p>24 stands?</p> <p>25 A. Typically. They were, yeah, the ones that</p>

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<p style="text-align: right;">29</p> <p>1 came into sale right at the right time at Buchheit's, so</p> <p>2 --</p> <p>3 Q. Okay. Do you recall the make and models of</p> <p>4 any of the other hang-on stands that you owned from Big</p> <p>5 Dog?</p> <p>6 A. I don't.</p> <p>7 Q. Do you recall purchasing any other</p> <p>8 manufacturer's hang-on stands?</p> <p>9 A. The hang-on stand, there may have been -- I do</p> <p>10 know that I had others besides theirs, but I don't know</p> <p>11 whose it would have been.</p> <p>12 Q. There's a company called Big Game. Do you</p> <p>13 know if you ever owned any Big Game stands?</p> <p>14 A. I've owned some of their equipment, but I</p> <p>15 can't say for certain if it was -- if it was a hang-on</p> <p>16 stand or not.</p> <p>17 Q. Company called Primal Vantage?</p> <p>18 A. Definitely not.</p> <p>19 Q. Ameristep?</p> <p>20 A. Ameristep equipment, but don't know if a</p> <p>21 hang-on.</p> <p>22 Q. Okay. API?</p> <p>23 A. No.</p> <p>24 Q. Summit?</p> <p>25 A. I have a Summit climber, had. I think it's in</p>	<p style="text-align: right;">31</p> <p>1 A. Cabela's.</p> <p>2 Q. Are you the kind of guy that keeps your</p> <p>3 receipts when you purchase things or are you the kind that</p> <p>4 throw them away?</p> <p>5 A. Only if it's a warranty thing where I'm</p> <p>6 worried about having to take it back, so no, I'm not the</p> <p>7 kind of guy to keep everything.</p> <p>8 Q. Okay. For tree stands, for instance, if you</p> <p>9 bought a tree stand, would you keep the proof of purchase</p> <p>10 receipt?</p> <p>11 A. No. If it was really expensive, but I don't</p> <p>12 really buy those.</p> <p>13 Q. When you would have bought, for instance, the</p> <p>14 Big Dog climbing stick that's at issue in this case, would</p> <p>15 you have purchased it with cash or with a credit card?</p> <p>16 A. I don't know. Could have been either.</p> <p>17 Q. Buy it in cash so you can hide it from your</p> <p>18 wife?</p> <p>19 A. No, not for the most part. She's pretty</p> <p>20 tolerant of my hunting.</p> <p>21 Q. And when you purchased these other tree</p> <p>22 stands, the hang-ons, the climbers, ladder stands, did</p> <p>23 they also come with full-body safety harnesses that were</p> <p>24 copackaged with those?</p> <p>25 A. Some did.</p>
<p style="text-align: right;">30</p> <p>1 the woods somewhere.</p> <p>2 Q. Okay. So you had the five -- approximately</p> <p>3 five other hang-on tree stands you owned --</p> <p>4 A. Yes.</p> <p>5 Q. -- in August of 2015 at the time of the fall?</p> <p>6 A. Yes.</p> <p>7 Q. How about climbers, what other climbers did</p> <p>8 you own at that time?</p> <p>9 A. Summit.</p> <p>10 Q. Do you recall the model?</p> <p>11 A. I think it was a Viper.</p> <p>12 Q. Approximately when did you purchase that?</p> <p>13 A. 2012-ish.</p> <p>14 Q. Any other climbers?</p> <p>15 A. No.</p> <p>16 Q. How about ladder stands?</p> <p>17 A. One ladder stand. I don't know the make or</p> <p>18 model.</p> <p>19 Q. When did you buy that, approximately?</p> <p>20 A. 2013.</p> <p>21 Q. Buy it at the same place?</p> <p>22 A. That, I don't recall. I don't recall if I</p> <p>23 bought that at Buchheit's.</p> <p>24 Q. Do you recall where you bought the Summit</p> <p>25 Viper from?</p>	<p style="text-align: right;">32</p> <p>1 Q. Like when you bought the Big Dog tree stands,</p> <p>2 did they come with safety harnesses?</p> <p>3 A. I don't recall if they did.</p> <p>4 Q. The Summit Viper, did that come with a safety</p> <p>5 harness?</p> <p>6 A. Maybe. I mean I know a lot of them come</p> <p>7 bundled, but they're so much harder to use than the one</p> <p>8 that I was using, that I just kind of put it aside.</p> <p>9 They're exactly the same, it's just the Gorilla brand</p> <p>10 keeps all the tangle nice and neat in the vest and so it's</p> <p>11 just easier to use.</p> <p>12 Q. So if you had purchased a number of tree</p> <p>13 stands in the five years prior to your fall, if they were</p> <p>14 copackaged with safety harnesses, you would not use those,</p> <p>15 but you would use the one you had purchased, the</p> <p>16 after-market Gorilla full-body safety harness?</p> <p>17 A. Yes.</p> <p>18 Q. Do you also recall when you had purchased</p> <p>19 these tree stands in the past, did they come with a safety</p> <p>20 DVD?</p> <p>21 A. Some came with DVDs. I recall them being more</p> <p>22 instructional. They may have had safety in with them as</p> <p>23 well.</p> <p>24 Q. And these -- we're talking these were videos</p> <p>25 that were copackaged with the tree stands you had</p>

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<p style="text-align: right;">33</p> <p>1 purchased that we discussed earlier?</p> <p>2 A. You mean the Big Dog ones?</p> <p>3 Q. Big Dog --</p> <p>4 A. Or any of them?</p> <p>5 Q. Any of them.</p> <p>6 A. Yeah, some of them did. I don't recall if all</p> <p>7 of them did.</p> <p>8 Q. Do you recall if the Big Dog came with a</p> <p>9 safety DVD?</p> <p>10 A. I don't remember.</p> <p>11 Q. If it did come with a safety DVD, would you</p> <p>12 watch those?</p> <p>13 A. Only if I didn't understand the instructions.</p> <p>14 Q. When you had purchased tree stands in the</p> <p>15 past, did you also, if it came -- I assume they all came</p> <p>16 with written warnings and instructions?</p> <p>17 A. I don't remember any not, yeah.</p> <p>18 Q. Okay.</p> <p>19 A. Not having literature.</p> <p>20 Q. Okay. Are you the kind of guy who, when you</p> <p>21 purchase a tree stand, are you going to read the warnings</p> <p>22 and instructions that are provided by the manufacturer?</p> <p>23 A. Typically, yeah.</p> <p>24 Q. You understand that it's important to follow</p> <p>25 manufacturer's warnings and instructions when utilizing a</p>	<p style="text-align: right;">35</p> <p>1 Q. And do you agree with me that if you deviate</p> <p>2 from a manufacturer's warnings and instructions about how</p> <p>3 to safely utilize their product such as a tree stand</p> <p>4 product, that that can increase the likelihood of an</p> <p>5 accident?</p> <p>6 A. Depending on their instruction or the warning.</p> <p>7 Q. Obviously this case involves a climbing stick.</p> <p>8 How many climbing sticks or similar type products have you</p> <p>9 owned in the past?</p> <p>10 A. I believe one set for every hang-on tree stand</p> <p>11 we discussed.</p> <p>12 Q. Okay. Were these all Big Dog climbing sticks</p> <p>13 or other models or other companies?</p> <p>14 A. I think I owned one by Ameristep.</p> <p>15 Q. Were the rest of them all Big Dog?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. Were they the same model as this one that's</p> <p>18 like 20 foot?</p> <p>19 A. No. If I remember correctly, I had two</p> <p>20 different kinds. One was where the ladder rungs came off,</p> <p>21 what do you call it, parallel, and then one alternated.</p> <p>22 Q. Staggered?</p> <p>23 A. Yeah, yeah.</p> <p>24 Q. At the time of your accident, we're talking</p> <p>25 August of 2015, how many other Big Dog climbing sticks did</p>
<p style="text-align: right;">34</p> <p>1 product such as a tree stand or tree stand-related</p> <p>2 product?</p> <p>3 A. Yeah, for the most -- yeah.</p> <p>4 Q. And if there's warnings that are provided, do</p> <p>5 you try to follow those warnings?</p> <p>6 A. If there's warnings provided in the</p> <p>7 literature, I try to follow them, yeah.</p> <p>8 Q. And if there's step-by-step assembly</p> <p>9 instructions by the manufacturer of the tree stand</p> <p>10 product, do you also try to follow those?</p> <p>11 A. Yes.</p> <p>12 Q. Do you pick and choose which ones you want to</p> <p>13 follow?</p> <p>14 A. No.</p> <p>15 Q. If there's also installation -- about how to</p> <p>16 install the product, whether it be a climbing stick or a</p> <p>17 tree stand, do you try to follow the manufacturer's</p> <p>18 instructions on how to do that?</p> <p>19 A. Yeah.</p> <p>20 Q. And if the manufacturer provides safety</p> <p>21 equipment with their products, do you also try to follow</p> <p>22 those instructions and use those as applicable?</p> <p>23 A. No, I mean not all the time. Like in this</p> <p>24 instance the -- you know, I would use a different safety</p> <p>25 harness than the one that's given.</p>	<p style="text-align: right;">36</p> <p>1 you own?</p> <p>2 A. I believe the five others, yeah.</p> <p>3 Q. Okay. And one of them may have been an</p> <p>4 Ameristep?</p> <p>5 A. Oh, sorry, yeah. Four others and the one</p> <p>6 Ameristep, yes.</p> <p>7 Q. And those all would have been purchased within</p> <p>8 a couple years. Would you basically purchase a tree stand</p> <p>9 at the same time you purchased a stick --</p> <p>10 A. Yes.</p> <p>11 Q. -- climbing stick?</p> <p>12 A. Usually.</p> <p>13 Q. So if you bought a new hang-on stand, you</p> <p>14 would buy a climbing stick to go with that one?</p> <p>15 A. Usually, yes.</p> <p>16 Q. Did you keep the climbing stick together with</p> <p>17 the same hang-on tree stand or would you kind of intermix</p> <p>18 the climbing sticks with the tree stands?</p> <p>19 A. I didn't pay any attention to it, so --</p> <p>20 Q. And for instance, the four to five prior Big</p> <p>21 Dog climbing sticks that you purchased, did they come with</p> <p>22 written warnings and instructions?</p> <p>23 A. Yeah, I believe they probably did.</p> <p>24 Q. And would you read those warnings and</p> <p>25 instructions each time you purchased a climbing stick?</p>

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<p style="text-align: right;">37</p> <p>1 A. If I thought it was necessary.</p> <p>2 Q. Were the Big Dog warnings and instructions</p> <p>3 similar about how to install and take down these climbing</p> <p>4 sticks?</p> <p>5 A. Yes, I believe they were.</p> <p>6 Q. So if Big Dog's written warnings and</p> <p>7 instructions were four pages for the climbing stick, would</p> <p>8 you read all four of those pages?</p> <p>9 A. If I was on a subsequent set of climbing</p> <p>10 sticks?</p> <p>11 Q. Yes.</p> <p>12 A. No. Typically I would see if the instructions</p> <p>13 were the same for assembly.</p> <p>14 Q. So if you bought the first pair of climbing</p> <p>15 sticks or first set of climbing sticks, would you read</p> <p>16 those warnings and instructions, if it was only four</p> <p>17 pages, would you read all four pages?</p> <p>18 A. For additional ones, no, not typically, not</p> <p>19 all the way through.</p> <p>20 Q. But for the first one?</p> <p>21 A. I mean I don't recall whether I did or not.</p> <p>22 Definitely the instructions for assembly.</p> <p>23 Q. How about for installation?</p> <p>24 A. I don't recall if I read them or not.</p> <p>25 Q. How about the generalized warnings?</p>	<p style="text-align: right;">39</p> <p>1 A. That's the -- that's the plan.</p> <p>2 Q. Okay. Is this something your wife insisted</p> <p>3 you use or your kids or --</p> <p>4 A. No, she didn't really know whether I used one</p> <p>5 or not.</p> <p>6 Q. Okay. When you began using one, was the</p> <p>7 Gorilla, the one you purchased in 2012, was that the first</p> <p>8 after-market safety harness you had purchased or had you</p> <p>9 used one before that?</p> <p>10 A. Do you mean after-market as in didn't come</p> <p>11 bundled with a -- I used bundled ones before.</p> <p>12 Q. Okay. So each time you would utilize a tree</p> <p>13 stand or a tree stand related product such as a climbing</p> <p>14 stick, would you use a full-body safety harness at all</p> <p>15 possible times to be connected to the tree?</p> <p>16 A. I think I started doing that with the Gorilla</p> <p>17 harness because that was the first one that came with a</p> <p>18 lineman's belt.</p> <p>19 Q. And what does a lineman's belt allow you to</p> <p>20 do?</p> <p>21 A. The typical setup for a safety harness allows</p> <p>22 you to attach yourself to the tree once you're up on the</p> <p>23 tree stand, and then the lineman's belt connects to you</p> <p>24 and wraps around the tree for while you're climbing, while</p> <p>25 you're going up and down the tree.</p>
<p style="text-align: right;">38</p> <p>1 A. I -- did I read -- I don't know if I read them</p> <p>2 all. You definitely check things like weight limits and</p> <p>3 stuff like that.</p> <p>4 Q. Why did you wear a safety harness when you</p> <p>5 would hunt?</p> <p>6 A. I didn't for the earlier part of my hunting</p> <p>7 career, and then, you know, it just kind of clicked that a</p> <p>8 little bit of comfort wasn't worth the risk.</p> <p>9 Q. Did you ever have a fall from a tree stand --</p> <p>10 A. No.</p> <p>11 Q. -- or tree stand product?</p> <p>12 A. No.</p> <p>13 Q. You've got three children and a wife, so you</p> <p>14 want to come home safely to them?</p> <p>15 A. Yes. Yeah.</p> <p>16 Q. And you realize that if you're utilizing a</p> <p>17 tree stand or a tree stand-related product such as a</p> <p>18 climbing stick, that once you leave the ground, there's a</p> <p>19 risk of falling for any number of different reasons?</p> <p>20 A. There's a risk, yeah.</p> <p>21 Q. And the purpose of wearing the full-body</p> <p>22 safety harness is that once you leave the ground, if</p> <p>23 you're connected to the tree, if you fall, slip or</p> <p>24 something breaks on you, that you don't fall straight to</p> <p>25 the ground and become injured?</p>	<p style="text-align: right;">40</p> <p>1 Q. So the idea of a lineman's belt is that if</p> <p>2 you're going to be climbing, for instance, a climbing</p> <p>3 stick up into a tree stand, the lineman's belt allows you</p> <p>4 to wrap it around the tree, connect it to both sides of</p> <p>5 your safety harness and allows you to connect it from the</p> <p>6 time you leave the ground until the time you climb up to</p> <p>7 the tree stand?</p> <p>8 A. Connected to the tree?</p> <p>9 Q. Yes.</p> <p>10 A. Well, yeah, I mean connected. You have a</p> <p>11 strap around you and the tree, yeah.</p> <p>12 Q. Okay. And in case you fall for any reason,</p> <p>13 the lineman's belt is going to prevent you from falling to</p> <p>14 the ground, it's going to pull you back towards the tree?</p> <p>15 A. Yeah, fall back into the tree.</p> <p>16 Q. And you also used -- do you use also lineman's</p> <p>17 belt during installation and take-down of tree stands</p> <p>18 including stick ladders or climbing sticks?</p> <p>19 A. Oh, yes.</p> <p>20 Q. So was your personal policy that any time you</p> <p>21 were going to use a tree stand, that you would be</p> <p>22 connected with your safety harness to the tree at all</p> <p>23 possible times?</p> <p>24 A. Yeah.</p> <p>25 Q. Did you ever have a fall from a tree stand</p>

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<p style="text-align: right;">41</p> <p>1 while you were wearing a safety harness and it arrested 2 your fall, prevented you from falling? 3 A. No. 4 Q. The Gorilla safety harness that you had 5 purchased, did you read those warnings and instructions? 6 A. I don't recall. 7 Q. Typically if you bought a brand new product 8 such as an after-market, you know, full-body safety 9 harness you had never used before, are you the kind of guy 10 that would just kind of figure it out on your own or would 11 you actually read the instructions, warnings, the 12 step-by-step usage illustrations? 13 A. I mean the instructions and illustrations 14 probably. 15 Q. Would you read the generalized warnings? 16 A. I don't know. It depends probably on the 17 product. 18 Q. Are you talking warning label on the product 19 or are you talking -- 20 A. Oh. Yeah, I thought you were talking about in 21 a pamphlet. 22 Q. Yeah, talking about the manual, yeah, the 23 written manual. 24 A. It depends. I can't say one way or the other. 25 Q. Okay. So some guys don't read instructions at</p>	<p style="text-align: right;">43</p> <p>1 said in approximately 2014? 2 A. One year before, yeah. 3 Q. Okay. Do you recall approximately when you 4 purchased it? 5 A. I don't. I base those purchases around sales 6 at Buchheit's, and I recall that they were usually in the 7 summer. 8 Q. And I know I asked you this before, but as 9 we're sitting here talking, do you recall when you 10 purchased -- we're talking the climbing stick at issue in 11 this case, do you recall if you purchased also the hang-on 12 Big Dog tree stand? 13 A. I don't remember if I did at the same time or 14 not. 15 Q. But a lot of times you would? 16 A. A lot of times I would try to, yeah. 17 Q. Was anybody with you when you made that 18 purchase? 19 A. No, not likely. 20 Q. And I think, according to your discovery, when 21 you purchased this subject climbing stick involved in your 22 accident, that you used it one time in 2014? 23 A. Yeah, I believe so. 24 Q. And I assume you installed it on a tree, on a 25 tree stand from there, hunted for that season and then</p>
<p style="text-align: right;">42</p> <p>1 all, some guys -- 2 A. Yeah. 3 Q. -- don't ask for instructions when they get 4 lost, now you've got GPS and stuff. 5 A. Right, right. 6 Q. You don't have to stop at a gas station, have 7 your wife or girlfriend yell at you. Some people read 8 from cover to cover, those are engineer types. 9 A. Yeah. 10 Q. I know you're a computer software guy. Where 11 do you fall in the spectrum, if you do? 12 A. I'm looking for stuff that I don't understand. 13 Q. Okay. 14 A. Yeah. 15 Q. Generally did you find the Big Dog written 16 warnings and instructions clear and easy to follow? 17 A. I don't remember. I don't -- yeah, I don't 18 remember. 19 Q. Did you ever have any questions or concerns or 20 confusion over any Big Dog instructions, whether it be for 21 a tree stand or a climbing stick? 22 A. I don't remember having, you know, being 23 confused or anything. 24 Q. Now, in this case you purchased, you believe, 25 the climbing stick that was involved in your accident you</p>	<p style="text-align: right;">44</p> <p>1 took it down at the end of the season? 2 A. Yes. 3 Q. And any difficulty with this subject tree 4 stand -- or this subject climbing stick, any trouble with 5 that whatsoever in 2014? 6 A. No, not that I recall. 7 Q. And do you recall approximately when in 2014 8 you installed it; in other words, month? 9 A. I don't recall when, but my habit would have 10 been to install things July/August time frame. 11 Q. And when would you take it down? 12 A. Early January was when I would make rounds and 13 take them all down. 14 Q. For instance, in 2014 how many different 15 stands did you have up, approximately? 16 A. Maybe five or six. 17 Q. And specifically do you recall which hang-on 18 tree stand you were utilizing with this climbing stick 19 involved in your accident, do you recall which of the 20 hang-ons you had? 21 A. In 2014? 22 Q. Yeah. 23 A. No, I don't recall. 24 Q. You told me before that you didn't necessarily 25 pair up a set of climbing sticks with a specific hang-on?</p>

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12 (Pages 45 to 48)

<p style="text-align: right;">45</p> <p>1 A. Right. I would go to the car, pull two out 2 and walk over to set it up. 3 Q. And where would you store your tree stands 4 off-season? 5 A. Either the garage or the basement. 6 Q. Do you recall approximately how many times you 7 climbed up and down the subject climbing stick in 2014; in 8 other words, how many times you hunted out of that -- 9 A. Actually none. I never hunted out of that 10 specific spot. 11 Q. Okay. You set it up? 12 A. Yeah. 13 Q. One time, put on the tree stand up there and 14 never hunted out of there? 15 A. Yeah. 16 Q. Then came back and -- 17 A. It happens. 18 Q. Then you came back in January, climbed up 19 there -- 20 A. Yeah. 21 Q. -- took down the tree stand, unhooked the 22 straps and removed the climbing stick? 23 A. Uh-huh. 24 Q. Yes? 25 A. Yes. Sorry, yeah.</p>	<p style="text-align: right;">47</p> <p>1 Q. Okay. You do recall, though, that this, the 2 20 foot climbing stick that was involved in your accident 3 did come with written warnings and instructions? 4 A. Well, like I said, I don't -- I don't ever 5 remember buying one and thinking, hey, it didn't come with 6 a manual. So yeah, it probably did. 7 Q. Okay. And would it be your recollection that 8 you would have sat down with this four-page document, 9 Exhibit Number 2, would you have sat down and read through 10 this? 11 A. I would have checked for something that looked 12 different in the instructions for assembly. 13 Q. Okay. So, for instance, if we go to Page 1 of 14 Exhibit 2, it's got a generalized warning at the top. 15 Would you have read that where it says warning at the very 16 top? 17 A. For the one I purchased in the year before, 18 probably not. 19 Q. And we're -- these instructions I'm talking, 20 these specifically go for the climbing stick that was 21 involved in your accident, okay? 22 A. Right. 23 Q. So I'm asking the warnings that came with your 24 product involved in this accident. So the top portion 25 that's got a couple warnings at the top, would you have</p>
<p style="text-align: right;">46</p> <p>1 Q. And noticed no operational problems with the 2 climbing stick at all? 3 A. No, not that I recall. 4 Q. Did you find the climbing stick easy to 5 install? 6 A. As easy as any that I had done. 7 Q. And did you use your Gorilla safety harness 8 when you installed and took down the stick ladder in 2014? 9 A. Probably. It's just -- other than safety, 10 it's a lot easier. 11 Q. So in 2015 obviously hunting season is coming 12 around the corner, it's August, late August, you decide 13 you're going to start hanging up some tree stands? 14 A. Yeah, later than normal, because we were out 15 of town, so we had come back in town, so I was just 16 getting to it when I could. 17 Q. Okay. Before we move on, I'm just going to 18 mark as Exhibit Number 2, this is I believe our Bates 19 stamp pages 1 through 4 that we're going to produce to you 20 in discovery. This is the four-page instruction manual 21 that came with your 20 foot Big Dog climbing stick that 22 was involved in your accident. Do you recall this 23 document whatsoever? 24 A. Are you -- if you're asking do I look at it 25 and remember it, no.</p>	<p style="text-align: right;">48</p> <p>1 read that? 2 A. I don't know if I would have or not. 3 Q. Okay. The middle portion of Page 2 has kind 4 of a parts list and some parts illustrations. Would you 5 have reviewed that on the first page? 6 A. Reviewed as in -- 7 Q. Would you have -- 8 A. -- glanced over? 9 Q. Yeah. 10 A. I would have probably glanced at it, yeah. 11 Q. Would you have confirmed you had all the 12 parts? 13 A. No. 14 Q. In this case you believe you had all the parts 15 and straps and bolts and nuts? 16 A. Yeah, the assembly went as expected, so yeah, 17 that's -- I would have looked at the parts list if the 18 assembly didn't line up. 19 Q. Okay. There's also, at the very bottom of 20 Page 1, another warning. Do you recall whether you would 21 have read that or not? 22 A. I don't recall. 23 Q. On Page 2 of Exhibit 2 the top portion has 24 assembly instructions, all models. Would you have read 25 that, if you recall?</p>

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<p style="text-align: right;">49</p> <p>1 A. I don't recall. I might have.</p> <p>2 Q. Okay. The next section on Page 2 is</p> <p>3 instructions for use, all models. Do you recall if you</p> <p>4 would have read that?</p> <p>5 A. I don't recall.</p> <p>6 Q. Okay. Then it's got some illustrations about</p> <p>7 how to strap certain things on Page 2 and then it says</p> <p>8 climbing stick removal, storage and care. Do you recall</p> <p>9 if you read that or not?</p> <p>10 A. I don't recall.</p> <p>11 Q. Okay. Then the last two pages of the manual</p> <p>12 are safety warnings. Do you recall whether you would have</p> <p>13 read those or not?</p> <p>14 A. I don't recall.</p> <p>15 Q. Okay. And going back to Exhibit Number 1,</p> <p>16 this is the manual for the tree stand, Tomcat model, I</p> <p>17 believe the one you had with you at the scene of the fall</p> <p>18 that you were going to attempt to install on the date of</p> <p>19 your accident. There are some generalized warnings in the</p> <p>20 first couple pages, Pages 1, 2 and 3. Do you recall</p> <p>21 whether you read those or not?</p> <p>22 A. I don't recall, no.</p> <p>23 Q. Okay. There's also -- on Page 4 of Exhibit 1</p> <p>24 there is some specialized instructions or warnings for</p> <p>25 utilizing hang-on tree stands and full-body safety</p>	<p style="text-align: right;">51</p> <p>1 Q. Nonetheless, it's still your intention to</p> <p>2 follow the manufacturer's instructions about how to</p> <p>3 properly assemble and install and use their product?</p> <p>4 A. Yeah, that's -- yeah, typically.</p> <p>5 Q. I'll mark as Exhibit 3, this is the Gorilla</p> <p>6 Deluxe Vest Safety Harness that would apply to the safety</p> <p>7 harness that you had, and I know it's a large document.</p> <p>8 A. Yeah.</p> <p>9 Q. And there's various sections in here. If you</p> <p>10 go to the very first page, it's got a table of contents on</p> <p>11 here about usage. Would you have -- would you have</p> <p>12 actually gone through this manual and read certain pages</p> <p>13 in here or would you have skimmed through it or would you</p> <p>14 have read, you know, cover to cover, the ones that --</p> <p>15 A. No.</p> <p>16 Q. -- applied specifically to your harness?</p> <p>17 A. I don't know how much of it I would have read</p> <p>18 or not. It was my first after-market harness, my only</p> <p>19 after-market harness. I did notice, when I was looking at</p> <p>20 this with Dan yesterday, that I'm not entirely certain</p> <p>21 this would have been the exact model because of the date,</p> <p>22 the revision date on the bottom.</p> <p>23 The way I typically did hunting purchases</p> <p>24 would have been with gift cards from Christmas and then</p> <p>25 they were typically spent in January, so I know I bought</p>
<p style="text-align: right;">50</p> <p>1 harnesses. Do you think you would have read those at all?</p> <p>2 A. I don't -- I don't know if I would have or</p> <p>3 not.</p> <p>4 Q. Okay. On the bottom of Page 4 to Page 5 has</p> <p>5 basically the assembly instructions and part list. Is</p> <p>6 that something you would have looked through and read?</p> <p>7 A. Probably. Those were always a little bit more</p> <p>8 confusing to assemble, so probably.</p> <p>9 Q. Okay. And then Page 6, I believe, has the</p> <p>10 installation of the product of Exhibit 1. Would you have</p> <p>11 read how to install the hang-on tree stand?</p> <p>12 A. For the one that was at the scene where I</p> <p>13 fell, since it was, you know, the fourth or fifth that I</p> <p>14 had owned, no, probably not.</p> <p>15 Q. Okay. And then the last -- last two pages has</p> <p>16 -- or I guess the next page, 7 -- let's see how many pages</p> <p>17 -- actually Page 6 and 7 have installation instructions.</p> <p>18 You told me you're not certain whether you would have read</p> <p>19 those or not?</p> <p>20 A. I'm not certain, no.</p> <p>21 Q. Okay. And then the last page, Page 8 of</p> <p>22 Exhibit 1, the tree stand instructions also have some</p> <p>23 removing, do you recall whether you would have read that</p> <p>24 or not?</p> <p>25 A. No.</p>	<p style="text-align: right;">52</p> <p>1 this in 2012 and the typical habit would have been that it</p> <p>2 was purchased in January sometime. But like I said, given</p> <p>3 that it was my first after-market, I would have -- I would</p> <p>4 have not like thrown out the manual.</p> <p>5 Q. Do you still have the manual around?</p> <p>6 A. No, no.</p> <p>7 Q. I'm marking as Exhibit 4 and I'll represent to</p> <p>8 you these are photographs of the harness that was</p> <p>9 represented to us --</p> <p>10 A. Yeah.</p> <p>11 Q. -- that was your Gorilla harness. Is that</p> <p>12 your Gorilla harness right there?</p> <p>13 A. That looks like it.</p> <p>14 Q. Exhibit 4.</p> <p>15 A. Except for I didn't remember the part where</p> <p>16 they cut me out of it, but yeah.</p> <p>17 Q. Yeah. Exhibit 4 does show the leg straps,</p> <p>18 looks like the EMS arrived --</p> <p>19 A. Yeah.</p> <p>20 Q. -- cut your -- cut the leg straps off your</p> <p>21 leg. Exhibit 5 is just another close-up of that.</p> <p>22 A. Yeah, I think Dan asked me about the clothes I</p> <p>23 was wearing, too. They cut me out of those at the</p> <p>24 hospital, too, that's why I don't have those.</p> <p>25 Q. I'll show you Exhibit 6 which is a</p>

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<p style="text-align: right;">53</p> <p>1 manufacturing date code.</p> <p>2 A. Okay.</p> <p>3 Q. And batch number on -- for your Gorilla safety</p> <p>4 harness and it says May 2012.</p> <p>5 A. Okay.</p> <p>6 Q. Now, this was -- that was on your harness.</p> <p>7 A. Okay.</p> <p>8 Q. Any reason to dispute that it was manufactured</p> <p>9 May of 2012, that was on the manufacturing label on your</p> <p>10 Gorilla harness?</p> <p>11 A. No, no reason to dispute it, just that's, like</p> <p>12 I said, typically gift cards for Christmas, spent in</p> <p>13 January.</p> <p>14 Q. So going back to my initial question --</p> <p>15 A. Yeah.</p> <p>16 Q. -- if the revision for the manual does say, I</p> <p>17 believe February 20 of 2012, that would predate the</p> <p>18 manufacture date of May 2012, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. So you're not saying that Exhibit</p> <p>21 Number 3 does not apply to this harness, are you?</p> <p>22 A. No, no. I thought there was a date issue</p> <p>23 because I thought I bought it earlier.</p> <p>24 Q. Okay. Now, specifically going back to Exhibit</p> <p>25 3, which I believe is the manual, Exhibit 3 --</p>	<p style="text-align: right;">55</p> <p>1 connected to a tree strap which is connected to the tree</p> <p>2 and that connects you to the tree through the tether of</p> <p>3 the safety harness?</p> <p>4 A. When you're at the top, yes.</p> <p>5 Q. And also there's also a lineman's belt</p> <p>6 provided with this product that allows you, as you</p> <p>7 described earlier, that if you're on the ground, you can</p> <p>8 wrap one of the straps around the tree, hook to both sides</p> <p>9 in your hip location and it allows you to climb up, for</p> <p>10 instance, the climbing stick and be connected to the tree</p> <p>11 in case you fall, you don't fall to the ground, it will</p> <p>12 pull you back into the tree?</p> <p>13 A. Yes.</p> <p>14 Q. Kind of like we see electrical repairmen do?</p> <p>15 A. Right, yeah.</p> <p>16 Q. And that was -- a strap also provided with</p> <p>17 this product?</p> <p>18 A. It was. I don't remember it being this strap,</p> <p>19 however. The lineman's belt I got was different.</p> <p>20 Q. Than what?</p> <p>21 A. Than what's shown here. Is one of these --</p> <p>22 yeah, than that.</p> <p>23 Q. How is it different?</p> <p>24 A. It had hooks on the end, J hooks on the end</p> <p>25 that attached to the loop for lineman's climbing strap.</p>
<p style="text-align: right;">54</p> <p>1 A. Yeah.</p> <p>2 Q. It's got a table of contents here, and Pages</p> <p>3 2, 3 and 4 have some general -- and 5 have some general</p> <p>4 safety warnings. Do you recall if you read that or not?</p> <p>5 A. No, I don't recall if I read them or not.</p> <p>6 Q. Okay. Page 6 has basically the package</p> <p>7 contents, shows you what was included with the product.</p> <p>8 A. Okay.</p> <p>9 Q. Do you recall looking at that at all?</p> <p>10 A. I don't recall looking at it. I mean I don't</p> <p>11 recall whether I did one way or the other.</p> <p>12 Q. Okay. And you're aware that this model tree</p> <p>13 stand comes with obviously the full vest, the four-point</p> <p>14 vest?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Yes?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And there's a tether that comes off the</p> <p>19 back of the vest that you secure to a tree strap that goes</p> <p>20 around the tree?</p> <p>21 A. You mean when you're at the platform?</p> <p>22 Q. Yes.</p> <p>23 A. That thing, yes.</p> <p>24 Q. Okay. And that is how you use a safety</p> <p>25 harness. Once you're at the top, the safety harness is</p>	<p style="text-align: right;">56</p> <p>1 Q. And that's what you believe came with this?</p> <p>2 A. Yes.</p> <p>3 Q. Did you receive any other straps with this</p> <p>4 Gorilla harness?</p> <p>5 A. The one that goes around the tree.</p> <p>6 Q. Okay. And you said the lineman's climbing</p> <p>7 strap had two hooks on it?</p> <p>8 A. Yes.</p> <p>9 Q. I'll show you what I'll mark as Exhibit 7.</p> <p>10 Is this what you believe came with the Gorilla --</p> <p>11 A. Yes.</p> <p>12 Q. -- safety harness? So Exhibit 7 is what you</p> <p>13 believe was the second strap that came with the Gorilla</p> <p>14 2012 safety harness?</p> <p>15 A. Yes.</p> <p>16 Q. Let me show you Exhibit 8. This is a</p> <p>17 photograph of another strap that was produced during the</p> <p>18 inspection. On the right-hand side of Exhibit 8 is</p> <p>19 another strap that has some orange stitching near the</p> <p>20 bottom of one end.</p> <p>21 A. Okay.</p> <p>22 Q. Where did that strap come from?</p> <p>23 A. I do not know.</p> <p>24 Q. Was that strap that you -- I've marked that as</p> <p>25 Exhibit 9 so we can differentiate them. Exhibit 9, was</p>

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<p style="text-align: right;">57</p> <p>1 this the strap that came with the Gorilla safety harness?</p> <p>2 A. I don't know. I don't know. No, I have no</p> <p>3 idea.</p> <p>4 Q. Do you know, on the day of your accident, were</p> <p>5 you utilizing that strap?</p> <p>6 A. For what purpose?</p> <p>7 Q. I don't know.</p> <p>8 A. No. I was utilizing that one.</p> <p>9 Q. Okay. So exhibit -- go back to Exhibit 8.</p> <p>10 A. Uh-huh.</p> <p>11 Q. Exhibit 8, the strap to the left-hand side</p> <p>12 that has the two hooks on it, that was the strap you were</p> <p>13 utilizing for the lineman's belt --</p> <p>14 A. Uh-huh.</p> <p>15 Q. -- on the Gorilla safety harness on the day of</p> <p>16 your accident?</p> <p>17 A. Yes.</p> <p>18 Q. And on Exhibit 9, the strap in Exhibit 9 you</p> <p>19 were not utilizing that strap at all on the day of your</p> <p>20 accident?</p> <p>21 A. No, I don't -- well, not that I recall. I</p> <p>22 don't know what it was --</p> <p>23 Q. Okay.</p> <p>24 A. Yeah, I don't know what that strap is for.</p> <p>25 Q. Okay. There was also a portion of a ratchet</p>	<p style="text-align: right;">59</p> <p>1 Q. Let me get my stickers out when I'm done</p> <p>2 marking here. During your inspection -- or our</p> <p>3 inspection, only one portion of the climbing stick was</p> <p>4 provided, that was the portion that bent.</p> <p>5 A. Yeah.</p> <p>6 Q. And I've marked that as Exhibit 11. That's --</p> <p>7 that's the one portion that bent.</p> <p>8 A. Broke, bent, yeah.</p> <p>9 Q. Okay. Exhibit 12 is just another angle of it.</p> <p>10 Exhibit 13 is just another angle. I'm going to show these</p> <p>11 later. Exhibit 14, just another photograph. Okay. Going</p> <p>12 back to -- going back to Exhibit 3, on Page 6 you said --</p> <p>13 so you believe the one --</p> <p>14 A. Which is 3?</p> <p>15 Q. Exhibit 3 is the Gorilla. So you believe,</p> <p>16 once again, that you received two straps with the Gorilla,</p> <p>17 one was the one that's in Exhibit 8 on the left-hand side</p> <p>18 with the two hooks, and the other one is the strap that</p> <p>19 you don't see here before you today? In other words --</p> <p>20 A. Oh. I don't -- I have no idea whether this is</p> <p>21 the what's called the tree strap or not.</p> <p>22 Q. Exhibit 9?</p> <p>23 A. Yeah. Yes, I don't know if that was the tree</p> <p>24 strap or not. It might be.</p> <p>25 Q. On the day of the accident did you have the</p>
<p style="text-align: right;">58</p> <p>1 strap that was produced during the inspection.</p> <p>2 A. Uh-huh.</p> <p>3 Q. Was it something that you were utilizing on</p> <p>4 the day of the accident?</p> <p>5 A. I hadn't utilized it. I don't know what it</p> <p>6 was for. I mean I have ratchet straps like that. I don't</p> <p>7 know what that one was for.</p> <p>8 Q. Okay. So I'll mark it Exhibit 10. So on the</p> <p>9 day of your fall, if this was produced during the</p> <p>10 inspection, were you planning to utilize Exhibit 10 at</p> <p>11 all, any portion of that?</p> <p>12 A. It may have been used to hang up the hang-on</p> <p>13 stand.</p> <p>14 Q. And do you know what the other portion of that</p> <p>15 would be? Would that be something you would use to hang a</p> <p>16 hang-on stand?</p> <p>17 A. Yeah, it would have been, yeah.</p> <p>18 Q. That one half of the ratchet strap?</p> <p>19 A. No, no, no. I mean -- well, no, it's missing</p> <p>20 the second part of it, yeah. Was this all still out there</p> <p>21 during the site inspection?</p> <p>22 MR. RYAN: No.</p> <p>23 A. Okay. This is -- Konrad retrieved all of</p> <p>24 this?</p> <p>25 MR. RYAN: Yeah, he found all of that.</p>	<p style="text-align: right;">60</p> <p>1 tree strap out with you to use to secure yourself to the</p> <p>2 tree?</p> <p>3 A. Probably, because I usually kept it stowed in</p> <p>4 the vest.</p> <p>5 Q. Okay. And if it wasn't in the vest pocket or</p> <p>6 it wasn't at the scene, do you know what, if any, that you</p> <p>7 were planning on utilizing for a tree strap?</p> <p>8 A. Say that again. I don't understand.</p> <p>9 Q. Sure. We've seen no other straps that were</p> <p>10 produced.</p> <p>11 A. Yeah.</p> <p>12 Q. There was nothing in your pocket, there was</p> <p>13 nothing else at the scene that was retrieved, so do you</p> <p>14 know specifically what strap you were going to use as a</p> <p>15 tree strap on the day of the incident?</p> <p>16 A. Was going to use, like to secure myself once I</p> <p>17 was up there?</p> <p>18 Q. Yes. Yeah.</p> <p>19 A. No. I usually depended on -- I'm like a</p> <p>20 creature of habit kind of guy, so it goes in there and I</p> <p>21 know exactly where it's at.</p> <p>22 Q. Okay. So Exhibit 9, you don't know where that</p> <p>23 came from, the strap in Exhibit 9?</p> <p>24 A. I don't know if it is for sure that. I mean</p> <p>25 I'm taking a stab at it. I assume this was probably in my</p>

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16 (Pages 61 to 64)

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<p style="text-align: right;">61</p> <p>1 pocket and would have been the one that they call the tree 2 strap. 3 Q. Okay. So Exhibit 9 is the one you believe you 4 were going to utilize as the tree strap? 5 A. Probably. 6 Q. And then Pages 7 through -- I'm sorry, 7 7 through 9 have some usage instructions for your model 8 safety harness. Do you recall if you read that at all? 9 A. I don't recall. 10 Q. Okay. Page 15 has -- Page 15 has a section 11 about selecting a tree. Do you recall reviewing that at 12 all? 13 A. I don't recall if I read it or not. 14 Q. Okay. Number -- on Page 16 of Exhibit 3 has 15 -- talking about threading your -- the buckle for the 16 lineman's and the tree strap. Do you recall reviewing 17 that at all? 18 A. No. 19 Q. Page 17 and 18 have sections about using the 20 lineman's belt. Did you read that at all? 21 A. I don't recall. 22 Q. Did you ever at one point believe maybe you 23 got the wrong strap with the safety harness? 24 A. No, because it was my only safety harness, so 25 I didn't -- I had never purchased a safety harness before</p>	<p style="text-align: right;">63</p> <p>1 that go back a number of years, but for Exhibit 3, though, 2 were there some portions that you did read, do you recall, 3 when you first opened the package? 4 A. Yeah. Like I said, I likely would have 5 because it was my first after-market safety harness, one 6 with the vest that contained the straps and all that. 7 Q. Explain for me how you would use the exhibit 8 -- on Exhibit 8, the photograph, the left-hand strap. 9 A. Uh-huh. 10 Q. The one with two hooks on it. 11 A. Yeah. 12 Q. Can you describe to me and you would -- you 13 would use that as the lineman's belt? 14 A. Uh-huh. 15 Q. Okay. Can you describe for me how you would 16 do that? 17 A. So with the two loops on the sides, it would 18 go -- it would hook through the one loop, go around the 19 tree, and then the other hook would attach to the other 20 loop, and then it has a, you know, tightening whatever you 21 call it, take the slack out of it mechanism. 22 Q. And if you look at the photographs with the 23 safety harness, I don't know if any of these are good 24 photographs enough to show you, can you see the loop, the 25 lineman's belt loop on any of these photographs?</p>
<p style="text-align: right;">62</p> <p>1 or since, I mean, because I haven't been up in a tree 2 since, but -- 3 Q. So in Exhibit 8, the left-hand side of the 4 strap that's depicted there, did that look to be the same 5 strap as depicted in Exhibit 3, or you can tell it's 6 different? 7 A. Back then or now? 8 Q. Both. Either. 9 A. I don't remember noticing a difference back 10 then. 11 Q. But now you can clearly see there's a 12 difference? 13 A. Yeah, yeah. Yeah, I can see there's a 14 difference now. 15 Q. And on Page 19 and top of 20 shows you 16 attaching the tree strap to the tree. Do you recall 17 reviewing that section? 18 A. I don't recall. 19 Q. And if you look at exhibit -- I'm sorry -- 20 Exhibit 3, Page 20, 21 and 22, it shows the user utilizing 21 the full-body safety harness with the lineman's belt with 22 the climbing aid. Did you read those sections, do you 23 recall? 24 A. I don't recall, no. 25 Q. And I know I've asked you a bunch of questions</p>	<p style="text-align: right;">64</p> <p>1 A. No, not on these I can't. 2 Q. Okay. Go back to exhibit -- Exhibit 3, Page 6 3 which is the Gorilla instructions. 4 A. Page 6. Yeah. 5 Q. Okay. So it's your testimony that -- if you 6 look on Page 6, the upper photograph shows -- it's 7 indicated loop for lineman's climbing strap? 8 A. Uh-huh. 9 Q. And it's on both sides, it's got kind of a 10 line to that. That is what you would -- maybe you can 11 show it to the videographer, show -- so Exhibit 8, you 12 would you take those two hooks? 13 A. Uh-huh. 14 Q. And then show the videographer on Page 6 of 15 Exhibit 3 where you place those. 16 A. Onto those two. 17 Q. And could you circle those for me and then put 18 your initials by it? 19 A. (The witness complied.) 20 Q. And maybe you can depict for the videographer 21 and explain -- 22 A. Yeah. 23 Q. So Exhibit 8 has -- it's got metal hooks on 24 it? 25 A. Yeah.</p>

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17 (Pages 65 to 68)

<p style="text-align: right;">65</p> <p>1 Q. So you take those hooks and you loop them</p> <p>2 inside the --</p> <p>3 A. Yeah, go through this loop, around the tree</p> <p>4 and then into the other loop.</p> <p>5 Q. Okay. And that's how you would secure</p> <p>6 yourself, safety harness to the tree, while utilizing a</p> <p>7 lineman's belt?</p> <p>8 A. Yes.</p> <p>9 Q. So during the installation you're just -- you</p> <p>10 were going to wear your full-body safety harness and have</p> <p>11 yourself connected with the lineman's belt as you're</p> <p>12 instructed to do and that's the configuration you had it</p> <p>13 in?</p> <p>14 A. Yes.</p> <p>15 Q. Is that the configuration you had on the day</p> <p>16 of the accident?</p> <p>17 A. Oh, yeah. Yeah. Putting those stands up is</p> <p>18 tiring, and having been on the last section, I would have</p> <p>19 used it, because if not, you know, your one arm in the</p> <p>20 tree and doing the stuff, so --</p> <p>21 Q. And the purpose of the lineman's belt is kind</p> <p>22 of a third arm, so it allows you to lean back or kind of</p> <p>23 basically --</p> <p>24 A. It can, yeah. I don't. I mean that's not --</p> <p>25 Q. The lineman's belt has got two purposes</p>	<p style="text-align: right;">67</p> <p>1 you're climbing, then you would have it on the whole time</p> <p>2 while you're doing the installation including the tree</p> <p>3 stand?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Yes?</p> <p>6 A. Yes. Sorry.</p> <p>7 Q. Okay. Now, on the date of the accident you</p> <p>8 bring your equipment out to the tree. You've got your --</p> <p>9 the tree stand, and I'm going to mark -- my understanding</p> <p>10 is after the accident, you had your friends, this Dr.</p> <p>11 Wid --</p> <p>12 A. Dr. Widmer.</p> <p>13 Q. Dr. Widmer and a friend of his?</p> <p>14 A. My father-in-law.</p> <p>15 Q. Oh.</p> <p>16 A. Because he is -- Dr. Widmer owns the property</p> <p>17 and he's --</p> <p>18 Q. Okay.</p> <p>19 A. -- a friend of the family.</p> <p>20 Q. Okay.</p> <p>21 A. So they came out together. Friend of my</p> <p>22 father-in-law's, so they came out together.</p> <p>23 Q. And Mr. Lentz is your --</p> <p>24 A. No. Mr. Lentz I don't know. He assisted</p> <p>25 Konrad in taking the stand down two, three months later.</p>
<p style="text-align: right;">66</p> <p>1 really.</p> <p>2 A. Yeah.</p> <p>3 Q. It kind of prevents you in case of a fall?</p> <p>4 A. Yeah.</p> <p>5 Q. Prevents you from striking the ground, but</p> <p>6 also it's also good for stability --</p> <p>7 A. Yeah.</p> <p>8 Q. -- when you're trying to hang your tree stand</p> <p>9 or even secure your climbing stick, that gives you more</p> <p>10 support? The tree is here --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- you're tight against the tree --</p> <p>13 A. Yeah.</p> <p>14 Q. -- and it allows your hands --</p> <p>15 A. Tight against the tree, yeah.</p> <p>16 Q. -- to move. It allows your hands to be free</p> <p>17 to move around to secure and tie things which you need to</p> <p>18 tie?</p> <p>19 A. Right, right.</p> <p>20 Q. And this is something you do each time you</p> <p>21 install a climbing stick, you utilize your Gorilla</p> <p>22 full-body safety harness with the same strap in the same</p> <p>23 manner you just described?</p> <p>24 A. From the time I got it, yeah.</p> <p>25 Q. I mean connect yourself from the ground,</p>	<p style="text-align: right;">68</p> <p>1 Q. And Konrad is your --</p> <p>2 A. Konrad is Dr. Widmer. I'm sorry.</p> <p>3 Q. Okay. Dr. Widmer. And he's your --</p> <p>4 A. Friend of the family, friend of my</p> <p>5 father-in-law's, owns the property that I was on.</p> <p>6 Q. Okay.</p> <p>7 A. And he came because I was in a pretty</p> <p>8 nondescript area that only he would really be able to get</p> <p>9 people to.</p> <p>10 MR. KARFIS: Do you want to take a break?</p> <p>11 I've been going for a while.</p> <p>12 A. I'm just a little cold.</p> <p>13 MR. KARFIS: Well, we could do this outside if</p> <p>14 you want.</p> <p>15 A. Make me appreciate the little bit of heat</p> <p>16 we've got going on?</p> <p>17 MR. KARFIS: Whatever you want to do. If you</p> <p>18 want to keep on going --</p> <p>19 MR. RYAN: I want to just run to the restroom.</p> <p>20 MR. KARFIS: Okay.</p> <p>21 VIDEOGRAPHER: This concludes media number</p> <p>22 one. The time is approximately 11:14 A.M. We're off the</p> <p>23 record.</p> <p>24 (Whereupon, a recess was taken from 11:14 to</p> <p>25 11:22 A.M.)</p>

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18 (Pages 69 to 72)

<p style="text-align: right;">69</p> <p>1 VIDEOGRAPHER: This begins media number two in 2 the deposition of Ben Scofield. The time is approximately 3 11:22 A.M. We're back on the record. 4 Q. Mr. Scofield, my understanding, after your 5 accident, I think it was Mr. Lentz and Dr. -- 6 A. Widmer. 7 Q. -- Widmer, they went to the site and retrieved 8 some of your equipment and they took a number of 9 photographs? 10 A. I wasn't there, but yeah, that's what I heard. 11 Q. Okay. I understand there was 10 photographs 12 that were taken by one of the two gentlemen. 13 A. Okay. 14 Q. Okay. And have you seen those photographs 15 before? 16 A. Maybe. I'm not sure. 17 Q. I've marked as Exhibit 15, and I've 18 subcategorized them A through J. 19 A. Okay. 20 Q. So there's 10 photographs here, and in the 21 bottom left-hand corner it has letters for them, so if I'm 22 referring to a certain -- certain one of those items, 23 that's what I'm talking about. 24 A. Okay. 25 Q. So it's Exhibit 15, and then, once again, the</p>	<p style="text-align: right;">71</p> <p>1 videos that would have been copackaged with some of the 2 tree stands you had purchased in the past. I'm going to 3 show you Exhibit 16 and 17. I'll represent to you that 4 these are two of the safety videos that would be 5 copackaged with tree stands sold that you would have 6 purchased. Do either of those -- I know they're just a CD 7 cover. Do either of those look familiar to you? 8 A. No, they don't look familiar. 9 Q. Okay. Do you recall some -- there being some 10 safety DVDs copackaged with some of your tree stands? 11 A. I don't -- oh, with some of them? 12 Q. Yeah. 13 A. Yeah, yeah. 14 Q. But whether you watched them or not you don't 15 recall? 16 A. I watched some. I don't recall watching 17 these. 18 Q. Okay. It could have been those; you just 19 don't remember? 20 A. Yeah, I have no idea. 21 Q. Okay. Okay. So the date of the fall -- 22 A. Uh-huh. 23 Q. -- you're going out to the site. Are you by 24 yourself that day? 25 A. Yes.</p>
<p style="text-align: right;">70</p> <p>1 lower right corner should have the -- 2 A. Okay. 3 Q. -- various letters, okay? Have you looked at 4 these photographs before? 5 A. A does not look familiar. I don't think so. 6 Q. Okay. The photographs were taken. Were they, 7 at some point, given to you, sent to your attorney, your 8 wife or somebody or how did you -- how did these 9 photographs -- 10 A. I think they were sent to Dan, the attorney. 11 Q. Okay. And after the fall, were you out at the 12 site when they retrieved the evidence? Were you out 13 there, by any chance? Were you out there in a car nearby, 14 were you out there at the scene? 15 A. No. I mean the car was a fair distance away. 16 Q. Okay. But on the date when it was retrieved, 17 were you -- 18 A. Oh, I'm sorry. 19 Q. Were you out at the site when it was 20 retrieved? 21 A. Oh, no, not at all. Not at all. 22 Q. Okay. 23 A. No, I wasn't. 24 Q. Okay. I don't mean to jump around on you, but 25 I just want to, before I forget, we discussed some safety</p>	<p style="text-align: right;">72</p> <p>1 Q. And it's whose property again? 2 A. Dr. Widmer's. 3 Q. Okay. 4 A. Yeah. 5 Q. And he's a friend of your father-in-law's? 6 A. Yeah. 7 Q. And he had gave you permission to go out there 8 and hunt? 9 A. Yeah, several years ago. 10 Q. Okay. And looking at Exhibit 15-A, this 11 depicts the climbing stick up in the tree, correct? 12 A. Yes. 13 Q. And so obviously post-accident, correct? 14 A. Yes. 15 Q. And if you look on the middle of the bottom 16 lower right corner of Exhibit 15-A, it has one portion of 17 the climbing stick on the ground. Do you see that? 18 A. Yeah. 19 Q. Were you utilizing all five sticks or -- 20 because there's four on the tree. The top -- the fourth 21 one is bent. The fifth one is on the ground. On the day 22 of the accident were you using all five or were you only 23 using four? 24 A. I don't recall. I don't recall. Sometimes 25 there's height issues. You go up too high and there's a</p>

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19 (Pages 73 to 76)

<p style="text-align: right;">73</p> <p>1 bunch of branches in the way, that kind of thing.</p> <p>2 Q. Well -- and we'll get to your fall scenario</p> <p>3 here shortly, but when you apparently grabbed on the top</p> <p>4 of the climbing stick, was there four sections in the tree</p> <p>5 or were there five sections in the tree?</p> <p>6 A. I honestly don't recall. If -- yeah, if a</p> <p>7 section came off, I don't remember.</p> <p>8 Q. Okay. So nonetheless, this depicts the</p> <p>9 subject climbing stick. It also shows at the very, very</p> <p>10 bottom of the tree you can see, under leaves, you can see</p> <p>11 the hang-on --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- tree stand, correct?</p> <p>14 A. Uh-huh.</p> <p>15 Q. Yes?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And if you go more over to -- on</p> <p>18 Exhibit 15-C, go one more page over, and that depicts the</p> <p>19 tree stand. Is that the tree stand that you were going to</p> <p>20 -- in the process of trying to hang that day?</p> <p>21 A. If that's the one they picked up, yes.</p> <p>22 Q. Okay. And you also had with you your Gorilla</p> <p>23 safety harness?</p> <p>24 A. I had it with me when I was climbing?</p> <p>25 Q. Yes. You were going to wear it that day, you</p>	<p style="text-align: right;">75</p> <p>1 A. No.</p> <p>2 Q. And that would be the one with the orange</p> <p>3 stitching near the bottom?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Yes?</p> <p>6 A. Yes. Sorry.</p> <p>7 Q. Did you have any other hunting equipment with</p> <p>8 you that you had that day?</p> <p>9 A. Not that I recall. I would have had my</p> <p>10 backpack with me with like a game camera, trail camera in</p> <p>11 it. That's about it.</p> <p>12 Q. Okay. And you had used this climbing stick</p> <p>13 the year before. I assume you had taken it all apart?</p> <p>14 A. Yeah, the sections, not the bolts.</p> <p>15 Q. And you had the -- did you have the strap</p> <p>16 still tied to the -- strap still tied to the --</p> <p>17 A. From the year before?</p> <p>18 Q. Yes.</p> <p>19 A. Probably.</p> <p>20 Q. I'll mark as Exhibit 18, and this is actually</p> <p>21 the -- one of the -- the step that actually broke.</p> <p>22 A. Uh-huh.</p> <p>23 Q. And it shows you where you had tied the straps</p> <p>24 that secured the stick ladder to the tree. Is that how</p> <p>25 you had them secured in all sections?</p>
<p style="text-align: right;">74</p> <p>1 had it on?</p> <p>2 A. Yeah. Yeah, I don't -- did they retrieve it?</p> <p>3 I don't know if -- no. I don't know if that one went with</p> <p>4 me to the hospital or not. I don't know.</p> <p>5 Q. Well, Exhibit 14 --</p> <p>6 A. Okay.</p> <p>7 Q. Or Exhibit 4, once again, that is the safety</p> <p>8 harness you were wearing at the time of your fall?</p> <p>9 A. Yes, it looks like it, yeah.</p> <p>10 Q. And Exhibit 8, are these the two straps that</p> <p>11 you were going to utilize; one is the tree strap, one is</p> <p>12 the lineman's belt?</p> <p>13 A. I was using that one as a lineman's belt. I</p> <p>14 don't know what this one was there for. I -- earlier, my</p> <p>15 best guess was it was in the pocket of my -- because</p> <p>16 that's, like I said, routine; that I don't ever have to</p> <p>17 worry about where it's at if it's always in my pocket.</p> <p>18 Q. Okay. So Exhibit 8, the left-hand strap with</p> <p>19 two hooks at the end --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- that's the one you were using as a</p> <p>22 lineman's belt?</p> <p>23 A. Yes.</p> <p>24 Q. And the strap to the right-hand side, you're</p> <p>25 not certain why that was there?</p>	<p style="text-align: right;">76</p> <p>1 A. I don't know. I don't recall.</p> <p>2 Q. Well, however 18 is depicted, you have the</p> <p>3 straps configured around looks like a -- kind of a thin</p> <p>4 metal pole that connects it, the two ends of the tree</p> <p>5 brace?</p> <p>6 A. Are you asking if that's what I see here?</p> <p>7 Q. Yeah.</p> <p>8 A. Yeah.</p> <p>9 Q. And is that how you recall having it tied?</p> <p>10 A. I don't recall. I don't remember.</p> <p>11 Q. I'll mark as Exhibit 19, you also recall there</p> <p>12 being warning labels on the straps that were used to</p> <p>13 secure the climbing stick to the tree?</p> <p>14 A. Do I -- yeah, I suppose.</p> <p>15 Q. Okay. Do you recall reading them?</p> <p>16 A. I don't remember if I did.</p> <p>17 Q. Okay. And that warning does tell you to wear</p> <p>18 the safety harness at all times when utilizing it and</p> <p>19 never detach, correct?</p> <p>20 A. Okay.</p> <p>21 Q. And that's something that you intended to</p> <p>22 practice?</p> <p>23 A. Yes, I did intend to practice that.</p> <p>24 Q. So you go to the site and you have the five</p> <p>25 portions of the stick ladder with the straps still</p>

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<p style="text-align: right;">77</p> <p>1 connected to it. Are you carrying it, are you going to</p> <p>2 Bobcat it or how do you get back there?</p> <p>3 A. Carry it, yeah.</p> <p>4 Q. Okay. You've got a tree stand in one hand and</p> <p>5 the five portions of the climbing stick in the other hand?</p> <p>6 A. Somehow, yeah. Yeah, something like that.</p> <p>7 Q. And then you selected the tree that's depicted</p> <p>8 in Exhibit 15-A?</p> <p>9 A. Looks like it.</p> <p>10 Q. Had you hunted from that tree before?</p> <p>11 A. No.</p> <p>12 Q. And you're just walking around and thought</p> <p>13 that would be a good tree?</p> <p>14 A. Yeah.</p> <p>15 Q. Okay. Are you aware of anybody else ever</p> <p>16 utilizing that tree to hunt from?</p> <p>17 A. No, not aware of that.</p> <p>18 Q. How's the game out there in that area?</p> <p>19 A. Eh, it's all right.</p> <p>20 Q. So --</p> <p>21 A. No record breakers, but it's all right.</p> <p>22 Q. Okay. So you get to -- you select this tree</p> <p>23 and then what do you do next?</p> <p>24 A. So I'm, you know, it's -- the area, the area</p> <p>25 right around it and then you've got to find a straight</p>	<p style="text-align: right;">79</p> <p>1 recollect is that five sections you put together and</p> <p>2 leaned up against the tree?</p> <p>3 A. Uh-huh. Uh-huh.</p> <p>4 Q. Yes?</p> <p>5 A. Yes. Sorry.</p> <p>6 Q. That's okay. So what did you do next?</p> <p>7 A. Leaned it up against the tree, then you go and</p> <p>8 you attach the first one that's at about -- if that's Mr.</p> <p>9 Lentz, his waist there in picture A. Then I would have</p> <p>10 strapped on and started climbing up the ladder, done the</p> <p>11 next one and then so on all the way up.</p> <p>12 Q. Okay. So we're clear here, so after you</p> <p>13 secure the first strap from ground level for the bottom</p> <p>14 climbing stick section, then you would take your safety</p> <p>15 harness, wrap exhibit -- the hook buckle on Exhibit 8,</p> <p>16 wrap that -- put one section into the hook on your safety</p> <p>17 harness, wrap it around the tree and hook it to the other</p> <p>18 section --</p> <p>19 A. Yes.</p> <p>20 Q. -- of the safety harness?</p> <p>21 A. Yes.</p> <p>22 Q. And that way you would be connected to the</p> <p>23 tree?</p> <p>24 A. Yeah, because I would have been leaving the</p> <p>25 ground, but yeah.</p>
<p style="text-align: right;">78</p> <p>1 tree because these things don't work on real crooked</p> <p>2 trees. Then I would have -- I did, I trimmed some smaller</p> <p>3 trees around the base of it. You set it down, you hook --</p> <p>4 fit the pieces together and then raise it up against the</p> <p>5 tree.</p> <p>6 Q. Okay. So if you're going to use four or five</p> <p>7 pieces, you put all four or five pieces together --</p> <p>8 A. Uh-huh.</p> <p>9 Q. -- or do it separately?</p> <p>10 A. No, all at the same time. Put them all</p> <p>11 together and then raise it up.</p> <p>12 Q. Okay. And once again, do you recall as you</p> <p>13 sit here today whether you had four or five sections all</p> <p>14 put together?</p> <p>15 A. I don't recall. I don't think I've used less</p> <p>16 than the five sections ever.</p> <p>17 Q. Okay.</p> <p>18 A. Yeah. This is the first time I've -- like if</p> <p>19 he sent me these, I never even realized there was a piece</p> <p>20 not attached.</p> <p>21 Q. Okay. So your recollection would have been if</p> <p>22 you were going to utilize the 20-foot stick ladder that</p> <p>23 has five sections, you're going to use all five sections?</p> <p>24 A. Yeah.</p> <p>25 Q. So on the day of the accident, best as you can</p>	<p style="text-align: right;">80</p> <p>1 Q. So then you start -- then you climb up. Can</p> <p>2 you give me an idea when you're climbing, I mean where are</p> <p>3 you standing when you're securing the next -- the next</p> <p>4 upper strap? I mean is it at waist level, is it above</p> <p>5 your head where you're strapping it or --</p> <p>6 A. No. For leverage, it's probably right around</p> <p>7 my shoulder.</p> <p>8 Q. Okay.</p> <p>9 A. Because of the way the straps work is you pull</p> <p>10 them tight and there's like teeth on the -- I think that's</p> <p>11 this kind. You pull them tight and there's teeth that</p> <p>12 grab on, so you need, you know, a fair amount of leverage</p> <p>13 to tighten it up.</p> <p>14 Q. Okay. So your practice was -- and these steps</p> <p>15 on this ladder, they're not staggered, they're the same</p> <p>16 level?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Correct?</p> <p>19 A. They're parallel, yeah.</p> <p>20 Q. Okay. So would you have both feet standing on</p> <p>21 the same lower step?</p> <p>22 A. I mean I don't -- yeah, I would imagine so,</p> <p>23 yeah.</p> <p>24 Q. And you say when -- so you would be standing,</p> <p>25 your feet would be at a level below the strap so basically</p>

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21 (Pages 81 to 84)

<p style="text-align: right;">81</p> <p>1 it would be you said shoulder level when you're tying it</p> <p>2 tight?</p> <p>3 A. I don't know which one -- I don't know where</p> <p>4 my feet would be. I know I would try to have been around</p> <p>5 shoulder level for the strap, yeah.</p> <p>6 Q. Okay.</p> <p>7 A. But it doesn't always work out that way.</p> <p>8 Q. Okay.</p> <p>9 A. Yeah.</p> <p>10 Q. Okay. So -- and I'm looking at Exhibit 15-A</p> <p>11 here. It's got -- obviously, so you're climbing up,</p> <p>12 you're securing the straps as you go?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Yes?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And Exhibit 15-A, once again, it shows</p> <p>17 the top -- the fourth section strap looks like it's</p> <p>18 connected to the tree?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And obviously the top of the fourth</p> <p>21 section is bent?</p> <p>22 A. Yes.</p> <p>23 Q. Now, do you recall at what point of the</p> <p>24 installation process this accident occurred? In other</p> <p>25 words, obviously you had -- it looks like you had</p>	<p style="text-align: right;">83</p> <p>1 Q. So you recall securing the fourth strap from</p> <p>2 the fourth ladder -- climbing stick section?</p> <p>3 A. I remember going to work on the last one.</p> <p>4 Q. Okay.</p> <p>5 A. So yeah, it -- the fourth one would have had</p> <p>6 to have been -- and I know I didn't install the last one,</p> <p>7 so to see the fourth one installed makes me realize that</p> <p>8 it was all five pieces and I guess one of them came off.</p> <p>9 Q. Okay. So you had the fifth piece secured, the</p> <p>10 top section of the stick ladder and --</p> <p>11 A. It would have -- yeah, it would have been</p> <p>12 originally when I put it up, yeah.</p> <p>13 Q. And so you're -- and -- so you're climbing up</p> <p>14 to secure the fifth strap for the fifth section?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And do you recall immediately before</p> <p>17 the climbing stick started bending backwards, do you</p> <p>18 recall where you were situated or what you were doing?</p> <p>19 A. I was -- no, I don't. I don't know if I was</p> <p>20 going upward or if I was repositioning to, you know,</p> <p>21 tension the thing.</p> <p>22 Q. Okay. So whether you were at the very top</p> <p>23 holding onto the top securing the fifth strap or whether</p> <p>24 you're climbing up towards the fifth strap, you don't</p> <p>25 recall?</p>
<p style="text-align: right;">82</p> <p>1 installed the fourth strap.</p> <p>2 A. Yes.</p> <p>3 Q. What happen next?</p> <p>4 A. That does make me think that this definitely</p> <p>5 was on at the time, I just don't remember it falling off,</p> <p>6 because I was on the last strap when it busted.</p> <p>7 Q. Okay.</p> <p>8 A. So that had to have been on. I -- up until I</p> <p>9 saw this picture, I didn't even remember that it had come</p> <p>10 off. I assumed this was the fifth section when I was</p> <p>11 looking up at it. So I had done the fourth section and I</p> <p>12 was starting to do the fifth section, so I was either</p> <p>13 already at level with it or I was moving up to get at the</p> <p>14 right level to adjust the tension on the strap or wrap it,</p> <p>15 I don't recall, and when I grabbed some part of the tree</p> <p>16 stand, it came with me and -- I mean is that what you want</p> <p>17 to know?</p> <p>18 Q. Yeah.</p> <p>19 A. Okay.</p> <p>20 Q. Yeah.</p> <p>21 A. So it came with me and I went back. I mean</p> <p>22 that's -- yeah.</p> <p>23 Q. And I'll ask -- let you talk, then I'll ask</p> <p>24 you some follow-up questions.</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">84</p> <p>1 A. Not with -- not with certainty.</p> <p>2 Q. Okay. Well, what do you think you were doing?</p> <p>3 A. I think I was at the top repositioning to deal</p> <p>4 with the final strap.</p> <p>5 Q. And that final strap, so would it be</p> <p>6 approximately shoulder level?</p> <p>7 A. Yeah, I believe so.</p> <p>8 Q. Okay.</p> <p>9 A. Yeah. I mean -- so my recollection was that I</p> <p>10 -- I had grabbed the top of the fifth piece. I don't know</p> <p>11 if that's in a pic by itself or not, but --</p> <p>12 Q. I gave you a bunch of these here, so let me</p> <p>13 see here. How about exhibit --</p> <p>14 A. Well, that would be the fourth, right?</p> <p>15 Q. Yeah. Exhibit 11. I'm just trying to get an</p> <p>16 idea. So Exhibit 11, and I understand this is the fourth</p> <p>17 piece, because the fifth piece isn't really depicted.</p> <p>18 Actually, no, the fifth piece is --</p> <p>19 A. Bottom of A?</p> <p>20 Q. Yeah.</p> <p>21 A. Yeah.</p> <p>22 Q. So maybe -- you've got a marker over there.</p> <p>23 Can you circle --</p> <p>24 A. I don't know which end is up. Oh, yeah, I do,</p> <p>25 because the ladder rungs go slightly up, I believe.</p>

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22 (Pages 85 to 88)

<p style="text-align: right;">85</p> <p>1 Q. So -- and I don't know if that's going to</p> <p>2 work. Anybody got a good Sharpie? Someone took mine at</p> <p>3 the last deposition.</p> <p>4 MR. RYAN: Do you want me to get you one?</p> <p>5 Q. That's easy. There you go. So maybe on</p> <p>6 Exhibit 15-A circle where you believe --</p> <p>7 A. I think I was grabbing there.</p> <p>8 Q. Okay. Do you want to put your -- maybe put an</p> <p>9 X through that center section there.</p> <p>10 A. An X?</p> <p>11 Q. Yeah.</p> <p>12 A. Okay.</p> <p>13 Q. And then maybe put your initials next to that.</p> <p>14 A. (The witness complied.)</p> <p>15 Q. And if you could hold up to the camera and</p> <p>16 let's clarify is that the fifth ladder section is -- in</p> <p>17 this photograph is on the ground at this point, but prior</p> <p>18 to the accident, the fifth section was on top of the</p> <p>19 fourth section and you were holding onto the top of the</p> <p>20 fifth section --</p> <p>21 A. Yeah.</p> <p>22 Q. -- when the ladder --</p> <p>23 A. I believe so.</p> <p>24 Q. -- climbing -- climbing stick began to bend</p> <p>25 backwards?</p>	<p style="text-align: right;">87</p> <p>1 step below, at some point below?</p> <p>2 A. I don't remember. I don't remember if I was,</p> <p>3 you know, going up or was already there. If I was already</p> <p>4 there, probably. If I was going up, then I may have</p> <p>5 been --</p> <p>6 Q. Okay. Do you recall, were you actually</p> <p>7 climbing at the point when --</p> <p>8 A. I think I was -- I think I was getting</p> <p>9 situated to deal with the strap. I don't think -- I think</p> <p>10 I was already up there.</p> <p>11 Q. Okay. And when you were -- do you believe</p> <p>12 that the other hand had the strap trying to secure it?</p> <p>13 A. No. I think I was trying to move myself.</p> <p>14 Q. To get in position to secure the --</p> <p>15 A. Yeah.</p> <p>16 Q. -- fifth strap?</p> <p>17 A. Yeah.</p> <p>18 Q. Okay. And would the strap, once again, if</p> <p>19 you're situated with the strap level, would that have been</p> <p>20 approximately level with your shoulder?</p> <p>21 A. I -- I think. I mean that's -- I know where I</p> <p>22 would have gotten the best leverage, so that would be an</p> <p>23 ideal.</p> <p>24 Q. Do you know what level your -- what step your</p> <p>25 foot on was? In other words --</p>
<p style="text-align: right;">86</p> <p>1 A. I believe so, yeah.</p> <p>2 Q. Okay. Do you recall which -- was it your left</p> <p>3 hand, right hand?</p> <p>4 A. I don't recall for certain.</p> <p>5 Q. Okay. And I'm just trying to get an idea, so</p> <p>6 at the very top --</p> <p>7 A. Put it down?</p> <p>8 Q. Sure. So if you're standing there, I'm just</p> <p>9 trying to get an idea of what -- can you tell me what kind</p> <p>10 of -- how high you were from the top? So if the very top</p> <p>11 is here, is the very top like, you know, eye level, is it</p> <p>12 at your shoulder, are you reaching up to it, are you</p> <p>13 reaching down to it, do you recall?</p> <p>14 A. I -- I don't for certain. I -- I don't for</p> <p>15 certain recall.</p> <p>16 Q. Okay. But -- I'm sorry. Which hand do you</p> <p>17 think was holding onto it?</p> <p>18 A. I don't know.</p> <p>19 Q. Was it one hand or both hands?</p> <p>20 A. I mean it was, you know, ladder-like, so --</p> <p>21 Q. Okay.</p> <p>22 A. Could have been either one. I don't know if</p> <p>23 it was -- I don't know if it was one or two hands,</p> <p>24 honestly.</p> <p>25 Q. Okay. And were both feet on the same level</p>	<p style="text-align: right;">88</p> <p>1 A. No. No.</p> <p>2 Q. So one hand is holding the very top of the</p> <p>3 fifth section. The other hand is trying to situate to get</p> <p>4 a hold of the strap to secure it?</p> <p>5 A. I don't know if I was reaching for the strap</p> <p>6 or not. I don't remember. Honestly, the overwhelming --</p> <p>7 the one overwhelming thing that I remember is feeling very</p> <p>8 confused when I fell, because the safety harness had come</p> <p>9 undone. That's like the one solid recollection I have is</p> <p>10 thinking what's going on.</p> <p>11 Q. Why am I on the ground?</p> <p>12 A. No. Falling backwards, I -- that was the</p> <p>13 overwhelming sense I had was being very confused.</p> <p>14 Q. When you were -- right before the fall, did</p> <p>15 you have tension on your lineman's belt? In other words,</p> <p>16 were you leaning back on the lineman's belt for support?</p> <p>17 A. I don't remember. I didn't like doing that,</p> <p>18 so not likely.</p> <p>19 Q. Okay. And according to the photographs I see,</p> <p>20 the bending characteristics of the stick ladder, it looks</p> <p>21 like you kind of bent almost straight back, a little bit</p> <p>22 to the left?</p> <p>23 A. Oh, I have no idea.</p> <p>24 Q. When it started bending, did you feel yourself</p> <p>25 falling backwards or to the left or the right?</p>

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23 (Pages 89 to 92)

<p style="text-align: right;">89</p> <p>1 A. I have no -- no idea.</p> <p>2 Q. Okay. So immediately before the stick ladder</p> <p>3 began to bend, what was your sensation? In other words,</p> <p>4 what --</p> <p>5 A. Confusion.</p> <p>6 Q. Okay.</p> <p>7 A. Seriously. I don't know. I find it funny</p> <p>8 looking back at it, so that's what I tell people, I just</p> <p>9 remember being really confused at that happening and the</p> <p>10 safety harness all at the same time and all that.</p> <p>11 Q. And the lineman's belt will prevent you not</p> <p>12 only from falling straight to the ground, but also prevent</p> <p>13 you from falling -- pulling away a sufficient way from the</p> <p>14 tree, right?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Correct?</p> <p>17 A. Yeah.</p> <p>18 Q. So basically even if you wanted to bend back</p> <p>19 the stick, the climbing stick, the lineman's belt limits</p> <p>20 how far you can move back and forwards or to the left or</p> <p>21 to the right?</p> <p>22 A. Yeah, depending on the tension, it adjusts,</p> <p>23 yeah.</p> <p>24 Q. How tight did you have the lineman's belt?</p> <p>25 A. I don't know. I do like to adjust them while</p>	<p style="text-align: right;">91</p> <p>1 the same thing?</p> <p>2 A. I am, yes.</p> <p>3 Q. Okay. And I am, too.</p> <p>4 A. Okay.</p> <p>5 Q. So I apologize if I'm confusing things, but</p> <p>6 those terms are used interchangeably.</p> <p>7 A. Okay.</p> <p>8 Q. What -- how was the weather that day?</p> <p>9 A. Hot. Dry, if I remember correctly.</p> <p>10 Q. What were you wearing besides the safety</p> <p>11 harness?</p> <p>12 A. Jeans and t-shirt. There's real bad ticks out</p> <p>13 there, so . . .</p> <p>14 Q. And when you began falling, did you feel</p> <p>15 anything from the safety harness catch at all or was there</p> <p>16 nothing?</p> <p>17 A. There was freefall.</p> <p>18 Q. Okay.</p> <p>19 A. Absolute freefall.</p> <p>20 Q. And when you were falling, were you still</p> <p>21 holding onto the end of this -- the climbing stick, do you</p> <p>22 know?</p> <p>23 A. I didn't remember that. I don't remember it</p> <p>24 hitting me either. I don't -- like I said, seeing this</p> <p>25 picture, this is the first time I ever realized it came</p>
<p style="text-align: right;">90</p> <p>1 going up.</p> <p>2 Q. Okay. And had you adjusted it while you were</p> <p>3 climbing that day?</p> <p>4 A. Probably.</p> <p>5 Q. Did you have any trouble at all with the</p> <p>6 lineman's belt at any point during the installation</p> <p>7 process prior to the accident occurring?</p> <p>8 A. No.</p> <p>9 Q. Had you ever had any problems in the past with</p> <p>10 the lineman's belt installing any of your stick ladders or</p> <p>11 climbing sticks?</p> <p>12 A. The most I remember is getting -- it's a</p> <p>13 little hard to get off and on, but that's all.</p> <p>14 Q. Okay. Because the hook nature of the --</p> <p>15 A. Just, yeah, that hook, you know, because I</p> <p>16 adjust it and by the time I get back to the bottom, it's</p> <p>17 really, really tight, so yeah.</p> <p>18 Q. And just for the record, I know I occasionally</p> <p>19 have been saying stick ladder instead of climbing stick.</p> <p>20 You understand those terms are pretty interchangeable?</p> <p>21 A. Yeah.</p> <p>22 Q. So just in case --</p> <p>23 A. The part that broke, yeah.</p> <p>24 Q. Okay. So -- and if we're talking, if I or you</p> <p>25 say climbing stick or stick ladder, we're talking about</p>	<p style="text-align: right;">92</p> <p>1 apart. When I looked up at it -- I took a picture</p> <p>2 somewhere. When I looked up at it and took a picture, I</p> <p>3 thought it was the fifth section.</p> <p>4 Q. When did you take a picture of it?</p> <p>5 A. Lying at the bottom of the tree.</p> <p>6 Q. Have we seen that? I haven't seen that.</p> <p>7 A. I don't know.</p> <p>8 MR. RYAN: Yeah, I should have sent it to you.</p> <p>9 Can we go off just for a second?</p> <p>10 MR. KARFIS: Yeah.</p> <p>11 VIDEOGRAPHER: The time is approximately 11:44</p> <p>12 A.M. We're off the record.</p> <p>13 (Whereupon, a discussion was held off the</p> <p>14 record.)</p> <p>15 VIDEOGRAPHER: This begins media number three</p> <p>16 in the deposition of Ben Scofield. The time is</p> <p>17 approximately 11:46 A.M. We're back on the record.</p> <p>18 Q. Mr. Scofield, we had a discussion off the</p> <p>19 record about apparently you took two photographs from the</p> <p>20 base of the tree --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- that apparently you sent to counsel.</p> <p>23 A. Yes.</p> <p>24 Q. And we'll print them up here and we'll ask you</p> <p>25 some questions about it later, and off the record we had</p>

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24 (Pages 93 to 96)

<p style="text-align: right;">93</p> <p>1 discussions to clarify that when you looked up there after 2 the accident, the fifth section had separated from the 3 fourth section? 4 A. I didn't know at the time, but yeah, it was 5 not attached to what I see in this. 6 Q. Okay. 7 A. The page there. 8 Q. And it would have been attached to -- the 9 fifth section was on top of the fourth section -- 10 A. Yeah. 11 Q. -- right before the accident? 12 A. Yes. 13 Q. Okay. And you told me before that the fifth 14 section didn't strike you on the way down or anything? 15 A. No, not that I recall. I didn't have any, you 16 know, physical damage from it or anything. 17 Q. Did anything -- I mean do you recall slipping, 18 losing your balance, anything before the accident? 19 A. No. It was like a trust fall. It was just 20 smooth. 21 Q. Okay. Do you recall leaning back when it 22 happened or were you leaning forward, to the side? 23 A. No. I mean I -- I -- I remember flinching, I 24 mean, you know, hit -- hit came and that wasn't slowly, it 25 just came, and then, you know, but you can't really flinch</p>	<p style="text-align: right;">95</p> <p>1 adjusted your lineman's belt prior to the fall? 2 A. I don't know. 3 Q. Would you typically adjust it a couple times 4 during -- 5 A. Yeah. Yeah, as the tree gets thinner, yeah. 6 Q. And would you keep yourself pretty tight to 7 the tree during the installation? 8 A. As much as I could and still maneuver, yeah. 9 I didn't like -- I know, like you said, electricians use 10 them and they lean and all that. I didn't like doing 11 that. 12 Q. Did you have any operational problems with any 13 of the straps during this install? 14 A. No, not that I recall. 15 Q. And I think you told me before, did you have 16 any questions or concerns or confusion about any written 17 warnings or instructions that came with this? 18 A. I don't remember being confused by it. 19 Q. In this case you're not saying that there were 20 any improper or inadequate warnings or instructions that 21 caused or contributed to your accident, right? 22 A. Say that again. 23 Q. You're not saying that there's any inadequate 24 or improper warnings or instructions that caused or 25 contributed to your accident, are you?</p>
<p style="text-align: right;">94</p> <p>1 from nothing behind you. 2 Q. So when you -- it sounds like you fell kind of 3 backwards based on the damage to this climbing stick. 4 When you fell, were your feet still on the same rungs 5 until basically you went vertical and they came off or do 6 you recall? 7 A. I don't recall. 8 Q. Were you able to -- with your other free hand, 9 were you able to grab anything else, the tree or the strap 10 or anything? 11 A. No. 12 Q. Happened pretty quick? 13 A. Yeah. Yeah, like I said, there was no catch, 14 it was a backwards -- like a trust fall, like smooth 15 motion. 16 Q. And when you came down, the lineman's belt, 17 was that still attached on one side of your safety 18 harness, do you recall? 19 A. I don't remember. I don't remember. 20 Q. Do you recall the safety harness or any part 21 of the lineman's belt coming and catching anything on the 22 way down; in other words, any part of the climbing stick? 23 A. You know, like I never felt like a tug or 24 anything, no. 25 Q. And when you were -- when is the last time you</p>	<p style="text-align: right;">96</p> <p>1 A. Do I think anything in the instruction manual 2 made it break? 3 Q. Made this accident occur, or caused or 4 contributed to it. 5 A. No. 6 Q. The retailer in this case, do you hold them 7 responsible other than the fact that they sold this 8 product, is there anything specifically they did to you, 9 any representations they made to you besides the fact that 10 they -- that you made the purchase there? 11 A. You mean like verbally? 12 Q. Sure. 13 A. No. 14 Q. Did they make any express representations 15 about the climbing stick about what it can and cannot do 16 or give you any direction about how to use it? 17 A. No, not verbally. I mean no more than what 18 you assume by somebody carrying a product. 19 Q. Sure. But other than the fact that the 20 retailer simply -- 21 A. I never talked to any of the associates about 22 it or anything. 23 Q. Okay. Other than them selling the product, 24 the retailer -- 25 A. Uh-huh.</p>

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25 (Pages 97 to 100)

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<p style="text-align: right;">97</p> <p>1 Q. -- did they do anything wrong that you believe 2 caused or contributed to your accident? 3 MR. RYAN: Just let me object to the form, it 4 calls for a legal conclusion, but you can answer. 5 A. I never conversed with any of them about any 6 of it, so verbally I never had a conversation with 7 anybody, so... 8 Q. Okay. And there was no, you know, marketing 9 brochures? 10 A. No, no. 11 Q. Nothing like that that caused you to -- induce 12 you to buy this product that was not -- 13 A. It was on sale. 14 Q. Okay. So other than the fact that -- 15 A. I literally waited every year for their summer 16 sale kind of a thing. 17 Q. Other than Buchheit having a sale, you making 18 that purchase -- 19 A. That was it, yeah. 20 Q. -- they did nothing wrong, as far as you're 21 concerned? 22 A. No. 23 Q. Okay. That's correct? 24 A. Yes. 25 Q. Was there any other operational problems that</p>	<p style="text-align: right;">99</p> <p>1 City. 2 Q. Okay. Do you have any other photographs or 3 any proof of purchase or anything that goes with this -- 4 the stand that you were attempting to install on the day 5 of the accident? 6 A. No. No. 7 Q. So all we have is the two pictures -- or three 8 pictures? 9 MR. RYAN: I'm going to send you -- he's got a 10 picture when he's sitting in the ambulance and he has 11 pictures before we took it down, but that may be those 12 pictures; you know what I mean, but I'll send them to you. 13 MR. KARFIS: Okay. E-mail to me, if you can. 14 If you can print those off, that would be great. We can 15 take a break and get them. 16 Q. (By Mr. Karfis) Okay. So after you fall, how 17 do you come down? 18 A. I believe I caught myself on the heel that had 19 a portion of bone break off. 20 Q. The right heel? 21 A. Right heel, yes. 22 Q. So you came down, did you fall straight down? 23 A. No. I was -- I was at a back -- you know, not 24 completely flat on my back, but I was, you know, maybe 25 45-ish.</p>
<p style="text-align: right;">98</p> <p>1 you had; in other words, securing the portions together 2 or, you know, nuts and bolts, any other issues you had 3 whatsoever with this -- 4 A. No. 5 Q. -- climbing stick? While doing the 6 installation process, the lower sections, did they seem to 7 be stable and secure when you were working on those lower 8 sections? 9 A. Yes. Yeah. 10 Q. And you said -- is it your understanding that 11 your wife -- or your wife made you discard all your 12 elevated tree stand products? 13 A. Well, she made me or asked me not to use them 14 anymore. I mean there's still some -- there's still some 15 out there. I didn't go like -- I don't want to go cut 16 them down, so -- and we moved. 17 Q. Okay. If you look at Exhibit 15-G, this is 18 another photograph of the tree stand that was retrieved 19 from the site according to what we've been told. This is 20 -- so this tree stand here, the one you were using on the 21 date of your accident, do you know, is it still in 22 existence, has it been discarded? Do you know where it's 23 at? 24 A. I'm sure it's been discarded, because I don't 25 -- I mean I don't have it. It didn't go with me to Kansas</p>	<p style="text-align: right;">100</p> <p>1 Q. So you came down on your right heel, then you 2 went down on your back? 3 A. Back, yeah. 4 Q. Okay. In proximity if you're looking straight 5 up to the stick ladder, did you fall kind of straight 6 down, to the left or the right? 7 A. I don't remember. I kind of freaked out when 8 I hit the ground and kind of scooted myself around with my 9 arms some. I know that when I quit scooting, I ended up 10 with my torso more or less where Mr. Lentz's feet are. 11 Q. So in Exhibit 15-A where Mr. Lentz -- 12 A. But I did a lot -- I did a lot of scooting, 13 though, so it may not be germane to how I landed. But 14 yeah, I was -- I know I was somewhere around there because 15 when they -- when I heard them looking for me, I was 16 banging on the tree stand with a knife to my right, so I 17 was -- would have been somewhere right around there. 18 Q. I don't know if you can -- before I mark this, 19 this is an aerial view looking straight down, so -- 20 A. Okay. 21 Q. So my great artwork. 22 A. Okay. 23 Q. Not very good, but -- so if you're looking 24 straight down from the Goodyear blimp -- 25 A. Yeah.</p>

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<p style="text-align: right;">101</p> <p>1 Q. -- that's the tree and it says tree there and 2 the climbing stick is depicted and the box is there. 3 A. Yeah. 4 Q. Can you show me with an X maybe where you 5 believe you came down and landed? 6 A. Yeah. Where I believe? 7 Q. Where you came down. 8 A. I -- I honestly don't know. 9 Q. You have no idea? 10 A. I have no guess, no. 11 Q. Okay. The photographs seem to indicate that 12 the climbing stick bent backwards and slightly to the 13 left. 14 A. Okay, yeah. 15 Q. Is that your recollection of -- 16 A. Oh -- 17 Q. You don't know? 18 A. No, not -- I have no idea how I fell. Sorry I 19 made you draw that. 20 Q. I know. Jeez. Missed my plane now. So you 21 strike the ground. Where you see in Exhibit 15-A the tree 22 stand, was that where it was? 23 A. I don't know. I don't know if they moved it 24 or -- 25 Q. Had you done anything with the tree stand</p>	<p style="text-align: right;">103</p> <p>1 A. If I remember correctly at the time when it 2 was still in our phones, I called her at about 6:15 and 3 the time frame between then and everything else is fuzzy, 4 but I believe I got to the hospital about 11:45, but -- so 5 the order of events were Dr. Widmer and my father-in-law 6 show up, Dr. Widmer had been an ER doc for a long time, so 7 he was a great first person to have on site. 8 Q. Okay. 9 A. And so his obvious first move was, well, we 10 can't move you. He called in the paramedics, which I was 11 hesitant to do because they wouldn't have been able to 12 find me. They needed a guide. I couldn't yell or 13 anything like that. So he calls in the paramedics, they 14 come in and the -- whoever was leading the group, the 15 first thing he told me was, you know, if we try to carry 16 you out of here on this plastic stretcher thingy the way 17 we just came in, we're going to drop you, so we have to 18 call in a UTV. 19 So they called in the UTV with a special rack. 20 They attached me to the rack, put me on the UTV and then 21 took me in the UTV back to the ambulance. 22 Q. Okay. And while you were sitting there, you 23 took a couple photographs of the -- 24 A. Yeah. 25 Q. -- the climbing stick from the ground?</p>
<p style="text-align: right;">102</p> <p>1 other than carry it out to the site -- 2 A. No. 3 Q. -- before the fall? 4 A. No. 5 Q. And what was your process once you had 6 finished the fifth section, securing the fifth top 7 climbing stick section -- 8 A. Uh-huh. 9 Q. -- would you climb back down to get the tree 10 stand or what would you do? 11 A. Yeah. Yeah, I would climb back down, tie a 12 rope onto it and then hoist it up. 13 Q. Okay. But you hadn't got to that part yet? 14 A. No. 15 Q. So after you strike the ground, what's your 16 next step? What do you do after you -- 17 A. Like I said, I scooted around a little bit, 18 then I kind of tried to collect myself, deal with some of 19 the pain and then I got my cell phone and called my wife. 20 Q. Okay. And what happened next? 21 A. A lot of back and forth and then, I don't know 22 how many hours later, some hours later, it had been dark 23 for a little bit, Dr. Widmer and my father-in-law showed 24 up. 25 Q. Okay. And what time did the accident occur?</p>	<p style="text-align: right;">104</p> <p>1 A. Uh-huh. 2 Q. Yes? 3 A. Yes. 4 Q. Okay. And how long did it take them before 5 they got out to the site? 6 A. I don't recall. Like I said, if it was around 7 6:15 I believe when I called my wife, Dr. Widmer and my 8 father-in-law didn't even show up until after dark, and 9 then the paramedics would have been 20 minutes behind that 10 probably. 11 Q. Okay. And then obviously EMS treated you, 12 transferred you and then took you to the hospital? 13 A. Yes. 14 Q. And we went through that. You obviously had 15 some testing and you had surgery the next day? 16 A. Uh-huh. 17 Q. Yes? 18 A. Yes. Sorry. 19 Q. And then we've been through the treatment you 20 had, for about the next nine months you went back on a 21 monthly basis with Dr. Quinn? 22 A. Yes. 23 Q. And did you see any other doctors, 24 specialists, orthopedic, neurosurgeons, anybody besides 25 Dr. Quinn, other than somebody that would be in her</p>

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<p style="text-align: right;">105</p> <p>1 practice?</p> <p>2 A. They -- well, I mean people came through while</p> <p>3 I was in the hospital. I don't know who all they were.</p> <p>4 And then the -- I had the one follow-up visit for my foot</p> <p>5 with some other guy that I never saw again.</p> <p>6 Q. And that was in the hospital?</p> <p>7 A. Yes. Yeah, it was in the hospital building.</p> <p>8 Q. The reason I'm asking, we're going to subpoena</p> <p>9 your records. We have the EMS records, we have the Mercy</p> <p>10 St. Louis records, Dr. Quinn's practice group records.</p> <p>11 A. Yeah.</p> <p>12 Q. Would there be any other doctors that have any</p> <p>13 records for you?</p> <p>14 A. Just that guy that saw my foot. I'm sure I</p> <p>15 have paperwork on it somewhere, but it was a follow-up</p> <p>16 thing and then that was it.</p> <p>17 Q. Was it a podiatrist or --</p> <p>18 A. I don't remember.</p> <p>19 Q. That was back in 2015?</p> <p>20 A. Yeah, I think it probably was, yeah.</p> <p>21 Q. We said a couple weeks after the accident?</p> <p>22 A. I think it was, yeah. Yeah.</p> <p>23 Q. Have you taken a hunter safety course in the</p> <p>24 state of Mississippi?</p> <p>25 A. Missouri?</p>	<p style="text-align: right;">107</p> <p>1 He's been taking them down as he sees them. I don't know.</p> <p>2 He doesn't get around the property like I did. He's quite</p> <p>3 a bit older than I am.</p> <p>4 MR. KARFIS: Dan, this might be a good time to</p> <p>5 take a break and grab those photographs, but --</p> <p>6 MR. RYAN: Okay.</p> <p>7 MR. KARFIS: Yeah, let's take a break.</p> <p>8 MR. RYAN: All right. Let's take a minute.</p> <p>9 VIDEOGRAPHER: This concludes media number</p> <p>10 three. The time is approximately 12:03 P.M. We're off</p> <p>11 the record.</p> <p>12 (Whereupon, a recess was taken from 12:03 to</p> <p>13 12:15 P.M.)</p> <p>14 VIDEOGRAPHER: This begins media number four</p> <p>15 in the deposition of Ben Scofield. The time is</p> <p>16 approximately 12:15 P.M. We're back on the record.</p> <p>17 Q. Mr. Scofield, you were kind enough to forward</p> <p>18 to your attorney some photographs that you had taken I</p> <p>19 believe on the day of the incident from the scene. I'm</p> <p>20 not certain which are from the scene or which are not,</p> <p>21 because some of these definitely do not look like from the</p> <p>22 scene, but I'll let you determine which ones -- because I</p> <p>23 can see from the foliage here, it's changed, but</p> <p>24 nonetheless, Photograph -- or Exhibit 21, that's a</p> <p>25 photograph you took while from the ground?</p>
<p style="text-align: right;">106</p> <p>1 Q. I'm sorry. Missouri.</p> <p>2 A. Yes.</p> <p>3 Q. And when did you take that class?</p> <p>4 A. I don't know. I don't know how long I've had</p> <p>5 the hunter's cert. Early 2000s probably.</p> <p>6 Q. So 12 to 15 years before the accident?</p> <p>7 A. Yeah.</p> <p>8 Q. Do you recall them talking about tree stand</p> <p>9 safety or safety harness usage?</p> <p>10 A. I'm sure they did. I mean I'm fairly --</p> <p>11 fairly familiar with it, excuse me.</p> <p>12 Q. Do you know Mr. Lentz at all?</p> <p>13 A. I've never met Mr. Lentz, no.</p> <p>14 Q. Have you talked to Mr. Lentz at all?</p> <p>15 A. Huh-uh. No, I think he was the -- sorry. No.</p> <p>16 I think he was the conservation agent for that area and</p> <p>17 that's how he became friends with the land owner.</p> <p>18 Q. And have you ever talked to Dr. Widmer about</p> <p>19 anything he observed during retrieving the evidence?</p> <p>20 A. No, not really.</p> <p>21 Q. Are you friendly with him at all?</p> <p>22 A. Oh, yeah. Yeah.</p> <p>23 Q. What did you do with your other, your existing</p> <p>24 climbing sticks, did you throw those away, too, or --</p> <p>25 A. I think most of them are out at the property.</p>	<p style="text-align: right;">108</p> <p>1 A. Yes.</p> <p>2 Q. Photograph 22, this looks maybe not from the</p> <p>3 ground because the foliage looks like it's changed there.</p> <p>4 Do you know where that picture came from?</p> <p>5 A. I don't know. Did I send you this one?</p> <p>6 MR. RYAN: Uh-huh.</p> <p>7 A. Okay.</p> <p>8 Q. Do you know where that's from?</p> <p>9 A. Do I know where it's from?</p> <p>10 Q. No, when it's from, where it came from.</p> <p>11 A. No, I don't. I mean I may have taken it and</p> <p>12 sent it to him, but -- I went back once before it was</p> <p>13 collected.</p> <p>14 Q. Okay. And just to check things out?</p> <p>15 A. I just wanted to show my wife.</p> <p>16 Q. Okay. And this -- so Exhibit 22 might have</p> <p>17 been taken before the evidence was retrieved?</p> <p>18 A. Yes, it was taken before the evidence was</p> <p>19 retrieved.</p> <p>20 Q. And I see the tree stand at the base of the</p> <p>21 tree in Exhibit 22. Do you see the fifth section of the</p> <p>22 climbing stick or --</p> <p>23 A. Yeah, I do actually. See it right there</p> <p>24 sticking out.</p> <p>25 Q. Okay. Can you circle that for to me?</p>

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<p style="text-align: right;">109</p> <p>1 A. Yeah. (The witness complied.)</p> <p>2 Q. Did you move the climbing stick or the tree</p> <p>3 stand after your fall?</p> <p>4 A. I may have moved the tree stand, I'm not</p> <p>5 certain. I didn't even know that the climbing stick had</p> <p>6 come off.</p> <p>7 Q. Okay. Exhibit 23 looks like a close-up of</p> <p>8 just the portion of the climbing stick on the tree?</p> <p>9 A. Yeah.</p> <p>10 Q. 24, another photograph that's just a close-up</p> <p>11 of one of the tree braces?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Yes?</p> <p>14 A. Yes.</p> <p>15 Q. And that depicts how you had it set up on the</p> <p>16 day of your accident?</p> <p>17 A. Yeah.</p> <p>18 Q. Exhibit 25, this is another one that looks</p> <p>19 like it was not from the date of the accident because</p> <p>20 it's --</p> <p>21 A. Yeah.</p> <p>22 Q. -- the foliage --</p> <p>23 A. Yes.</p> <p>24 Q. And I didn't mark this, but this is a</p> <p>25 photograph you took looks like from a store of just an</p>	<p style="text-align: right;">111</p> <p>1 MR. RYAN: Yeah.</p> <p>2 Q. Okay. Did you ever report this to the DNR or</p> <p>3 any investigating officials?</p> <p>4 A. No.</p> <p>5 Q. Have you talked to anybody else besides your</p> <p>6 attorneys in this case and maybe Mr. -- Dr. Widmer about</p> <p>7 your incident and your family, friends?</p> <p>8 A. I run kind of a big Face Book page dedicated</p> <p>9 to hunting deer in Missouri, and for lack of anything</p> <p>10 better to do, I posted about it while I was laying on the</p> <p>11 ground waiting for people to come get me. That's actually</p> <p>12 why I took this picture. I posted it with a safety</p> <p>13 warning, oddly enough, about making sure people wear their</p> <p>14 harnesses.</p> <p>15 Q. Have you had any other treatment for either</p> <p>16 injury you sustained in this accident other than what we</p> <p>17 have talked about?</p> <p>18 A. No.</p> <p>19 Q. How long were you in the hospital for?</p> <p>20 A. I think the fall occurred on a Thursday, and I</p> <p>21 believe I got out on Sunday or maybe Saturday. It's a</p> <p>22 little blurry.</p> <p>23 Q. And have you delineated specific medical loss,</p> <p>24 medical expense incurred? I mean I haven't seen that.</p> <p>25 MR. RYAN: Yeah, we should have sent it to</p>
<p style="text-align: right;">110</p> <p>1 exemplar?</p> <p>2 A. Yes, yes.</p> <p>3 Q. Okay. This was a different model than yours,</p> <p>4 do you know, or just --</p> <p>5 A. At the time -- well, when I was talking to him</p> <p>6 about it, I had only seen two models, the one where the</p> <p>7 steps weren't even and the ones where they were.</p> <p>8 Q. Okay.</p> <p>9 A. So that was my -- yeah, my attempt at an</p> <p>10 example.</p> <p>11 Q. Okay. So is there only one photograph taken</p> <p>12 on the day of the accident from the scene, and that would</p> <p>13 be Exhibit 21?</p> <p>14 A. There was that nighttime one. I don't know if</p> <p>15 it was worth a hoot.</p> <p>16 MR. RYAN: Printed that one off, too. It was</p> <p>17 dark.</p> <p>18 A. It fades before you really even get to the --</p> <p>19 Q. You can't see it?</p> <p>20 A. -- busted section.</p> <p>21 Q. Okay.</p> <p>22 A. I can show it to you again on my phone and you</p> <p>23 can see if you want it.</p> <p>24 Q. You sent it to me already, right, so if it's</p> <p>25 something --</p>	<p style="text-align: right;">112</p> <p>1 you. The bills?</p> <p>2 MR. KARFIS: Yeah.</p> <p>3 MR. RYAN: Yeah. If you don't have them, let</p> <p>4 me know.</p> <p>5 MR. KARFIS: Okay.</p> <p>6 MR. RYAN: You should have them.</p> <p>7 Q. Okay. So once again, you have not sought any</p> <p>8 medical treatment specifically for injuries from this</p> <p>9 incident since approximately June of 2016?</p> <p>10 A. My last visit with my, yeah, neurosurgeon.</p> <p>11 Q. Okay. Do you recall them taking your safety</p> <p>12 harness off you at the scene, at the hospital, or do you</p> <p>13 recall where?</p> <p>14 A. I don't recall where.</p> <p>15 Q. And do you recall them specifically cutting</p> <p>16 off your leg straps?</p> <p>17 A. I remember them cutting off everything I was</p> <p>18 wearing. I just don't remember where.</p> <p>19 MR. KARFIS: I think those are all the</p> <p>20 questions I have. Thank you very much.</p> <p>21 MR. RYAN: Okay. We'll waive signature.</p> <p>22 That's it.</p> <p>23 A. All right.</p> <p>24 VIDEOGRAPHER: Upon concluding the deposition,</p> <p>25 we will take attorneys' orders now.</p>

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<p style="text-align: right;">113</p> <p>1 MR. KARFIS: I'll take a copy of the video. 2 MR. RYAN: Me, too. 3 COURT REPORTER: What format of transcript 4 would you like? 5 MR. KARFIS: I'll take a condensed, one-sided, 6 you can attach the exhibits in color. 7 MR. RYAN: Same, although I like electronic. 8 MR. KARFIS: E-tran, too. You've got my 9 e-mail, right? 10 COURT REPORTER: Yes. 11 VIDEOGRAPHER: This concludes the 12 video-recorded deposition of Ben Scofield. The time is 13 approximately 12:23 P.M. We're off the record. 14 15 (The deposition concluded at 12:23 P.M.) 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">115</p> <p>1 IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT 2 JEFFERSON COUNTY, MISSOURI 3 BEN SCOFIELD) 4 vs.) Cause No. 17JE-CC00227 5) 6 BIG DOG OUTDOORS, INC., and) 7 BUCHEIT OF HERCULANEUM,) 8 INC.) 9 10 CERTIFICATE OF DEPOSITION 11 Comes now Beth O. Zink, and pursuant to Rule 12 57.03(g)(2)(a) states as follows: 13 The deposition of Benjamin Scofield was taken on January 14 5, 2018. 15 The name and address of the person or firm having custody 16 of the original transcript is: 17 18 Clark Hill, PLC 19 151 South Old Woodward Avenue 20 Birmingham, Michigan 48009 21 22 At the time of delivery of the transcript, the deposition 23 charges had not been paid. Payment status will be updated 24 at the request of the Court pursuant to Section 25 492.590(2)RSMo. By: _____ Fortz Legal Support, LLC 7125 Orchard Lake Road West Bloomfield, Michigan 48322 (844)730-4066</p>
<p style="text-align: right;">114</p> <p>1 CERTIFICATE OF REPORTER 2 3 I, BETH O. ZINK, a Registered Professional 4 Reporter, Missouri Certified Court Reporter, Illinois 5 Certified Shorthand Reporter and Notary Public within and 6 for the State of Illinois, do hereby certify that the 7 witness whose testimony appears in the foregoing 8 deposition was duly sworn by me; that the testimony of 9 said witness was taken by me to the best of my ability and 10 thereafter reduced to typewriting under my direction; that 11 I am neither counsel for, related to, nor employed by any 12 of the parties to the action in which this deposition was 13 taken, and further, that I am not a relative or employee 14 of any attorney or counsel employed by the parties 15 thereto, nor financially or otherwise interested in the 16 outcome of the action. 17 18 19 20 _____ 21 Notary Public within and for the 22 State of Illinois, ILC#084-004477 23 MOCCR#799 24 25 My commission expires August 3rd, 2018.</p>	

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Exhibit B

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC. and BUCHHEIT
OF HERCULANEUM, INC.

Defendants.

AFFIDAVIT OF PETRINA JANNIN

STATE OF MISSOURI

COUNTY OF JEFFERSON

)
) ss
)

I, Petrina Jannin, have personal knowledge concerning the statements contained in this Affidavit.

1. I am the Safety Manager at Buchheit of Herculanum, Inc. ("Buchheit"). I have been employed at Buchheit from 1992 to present.

2. As the Safety Manager of Buchheit of Herculanum, Inc., I have personal knowledge concerning the purchase of treestand products, including those products distributed by Big Dog Treestands, Inc. Buchheit purchased treestand products, including climbing sticks, from WSTR Holding's, Inc. d/b/a/ Big Dog Treestands ("Big Dog").

3. During the time that Big Dog sold climbing sticks to Buchheit, the only contract between the parties was a standard Vendor's Agreement which contained all the terms and conditions concerning the sale of treestands and outdoor products, including climbing sticks. There was never any specialized contract negotiated between Big Dog and Buchheit for the sale of treestands or outdoor products, including climbing sticks.

4. The subject climbing stick involved in this lawsuit has been identified as a Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20 that was manufactured and distributed by Big Dog and that Big Dog sold such a product to Buchheit.

5. Big Dog was the manufacturer and/or distributor of the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20 at issue in this lawsuit.

6. At no time did Buchheit have any involvement with the design, manufacture, production or assembly of any climbing sticks (or treestands) sold by Big Dog, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

7. At no time did Buchheit have any involvement with the material selection of any parts or any climbing stick (or treestands) sold by Big Dog, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

8. At no time did Buchheit have any involvement with the manufacturing process of any climbing sticks (or treestands) sold by Big Dog, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

9. At no time did Buchheit have any involvement with the warnings for any climbing sticks (or treestands) sold by Big Dog, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

10. At no time did Buchheit have any involvement with the instructions for any climbing sticks (or treestands) sold by Big Dog, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

11. At no time did Buchheit have any involvement with the labeling for any climbing sticks (or treestands) sold by Big Dog, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

12. At no time did Buchheit have any involvement with the packaging for any climbing sticks (or treestands) sold by Big Dog, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

13. At no time did Buchheit have any involvement with the testing of any climbing sticks (or treestands) sold by Big Dog, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

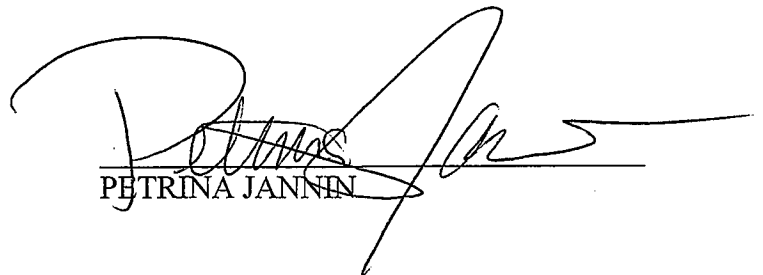
14. At no time did Buchheit have any involvement with quality assurance of any climbing sticks (or treestands) sold by Big Dog, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

15. The Buchheit name has never been placed on any climbing sticks (or treestands) distributed by Big Dog at any time.

16. The Buchheit name has never been placed on any warnings and instructions, labeling, or packaging for climbing sticks (or treestands) sold by Big Dog Treestands.

17. The subject climbing sticks, as with all other climbing sticks (or treestands) sold by Buchheit, was sealed in a cardboard box before it was shipped to Buchheit for sale in its stores, and alleged to have been sold to Plaintiff and was not altered in any way by Buchheit.

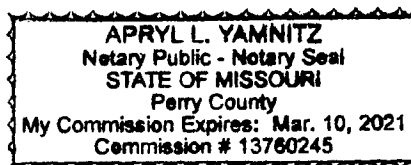
18. Buchheit is aware of no facts or circumstances upon which a verdict could be reached against it other than its status as the seller of the subject climbing sticks.


PETRINA JANNIN

Subscribed and sworn to before me on this
the 29 day of May, 2020

Apryl L. Yamnitz

Notary Public, State of Missouri
My Commission Expires: March 10, 2021



IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,)	
)	
Plaintiff,)	
)	
vs.	)	Cause No: 17JE-CC00227
)	
BIG DOG OUTDOORS, INC.,)	
BUCHHEIT OF HERCULANEUM, INC.)	
BIG DOG TREE STANDS, INC.)	
BUCHHEIT HERCULANEUM, INC.)	
BUCHHEIT OF HERCULANEUM, INC.)	
)	
and)	
)	
WSTR HOLDINGS, INC. D/B/A BIG DOG)	
TREESTANDS, INC.)	
)	
Defendants.)	

AFFIDAVIT OF TERRY ROYER

State of Illinois)
) ss
County of Peoria)

I have personal knowledge concerning the statements contained in this Affidavit.

1. I was the CFO at Big Dog Treestands, Inc. from 2005 to 2016.
2. As the CFO of Big Dog Treestands, I have personal knowledge concerning the treestand products distributed by Big Dog Treestands, including climbing sticks. Big Dog Treestands is a distributor of certain outdoor products, including climbing sticks. Big Dog Treestands distributed/sold climbing sticks to Buchheit of Herculaneum, Inc. ("Buchheit").
3. As Big Dog Treestands CFO, I am knowledgeable concerning the Big Dog Treestand products, including treestands and climbing sticks sold to Buchheit.
4. As Big Dog Treestands CFO, I am knowledgeable concerning any involvement Buchheit had with the sale of Big Dog Treestands climbing sticks to Buchheit.

5. During the time that Big Dog Treestands sold climbing sticks to Buchheit, the only contract between the parties was a standard Vendor's Agreement which contained all the terms and conditions concerning the sale of treestands and outdoor products, including climbing sticks. There was never any specialized contract negotiated between Big Dog Treestands and Buchheit for the sale of treestands or outdoor product, including climbing sticks.

6. The subject climbing stick has been identified as a Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20 manufactured by a factory overseas for Big Dog Treestands and distributed in the United States.

7. Plaintiff has submitted that he purchased this climbing stick from Buchheit's store in Herculaneum, Missouri in 2014 (without any proof of purchase to date) and this model was sold to Buchheit by Big Dog Treestands in 2014.

8. At no time did Buchheit have any involvement with the design of any climbing sticks sold by Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

9. At no time did Buchheit have any involvement with the design of any climbing sticks (or treestands).

10. At no time did Buchheit have any involvement with the material selection of any part of any climbing stick sold by Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

11. At no time did Buchheit have any involvement with the manufacturing process of any climbing sticks (or treestand) sold by Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

12. At no time did Buchheit have any involvement with the warnings for any climbing sticks (or treestands) sold by Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

13. At no time did Buchheit have any involvement with the instructions for any climbing sticks (or treestands) sold by Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

14. At no time did Buchheit have any involvement with the labeling for any climbing sticks (or treestands) sold by Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

15. At no time did Buchheit have any involvement with the packaging for any climbing sticks (or treestands) sold by Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

16. At no time did Buchheit have any involvement with the testing of any climbing sticks (or treestands) to confirm compliance with applicable TMS/ASTM industry standards.

17. At no time did Buchheit have any involvement with production of any climbing sticks (or treestands) sold by Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

18. At no time did Buchheit have any involvement with quality assurance of any climbing sticks (or treestands) sold by Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

19. Buchheit had no contractual arrangement with the overseas manufacturer who produced climbing sticks (or treestands) for Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20.

20. Buchheit had no direct dealings with the overseas manufacturing facility where the subject Big Dog 20' Hot Foot Climbing Stick, Model BDL5-20 climbing stick was produced.


21. The Buchheit name has never been placed on any climbing sticks (or treestands) distributed by Big Dog Treestands at any time.

22. The Buchheit name has never been placed on any warnings and instructions, labeling, or packaging for climbing sticks (or treestands) sold by Big Dog Treestands.

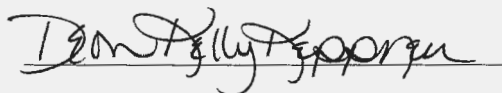
23. Big Dog Treestands has never distributed to Buchheit a climbing stick (or treestand) bearing the Buchheit name and/or a Buchheit brand name.

24. The subject climbing sticks, as with all other climbing sticks (or treestands) distributed by Buchheit, was sealed in a cardboard box before it was shipped to Buchheit for sale.

25. Buchheit never inspected the manufacturing facility concerning the design and manufacture of climbing sticks (or treestands).


TERRY ROYER

Subscribed and sworn to before me on this
the 11 day of April, 2018



Notary Public, State of Illinois
My Commission Expires: 5/26/18



This SPECIAL MULTI-FLEX POLICY is provided by the stock insurance company(s) of The Hartford Insurance Group, shown below.

COMMON POLICY DECLARATIONS

POLICY NUMBER: 83 ECS OF5710

RENEWAL OF: 83 ECS OF5710



Named Insured and Mailing Address: BIG DOG TREESTANDS, INC.
(No., Street, Town, State, Zip Code) P.O. BOX 952
MORTON, IL 61550

Policy Period: **From** 11/01/2014 **To** 11/01/2015
12:01 a.m. Standard Time at your mailing address shown above.

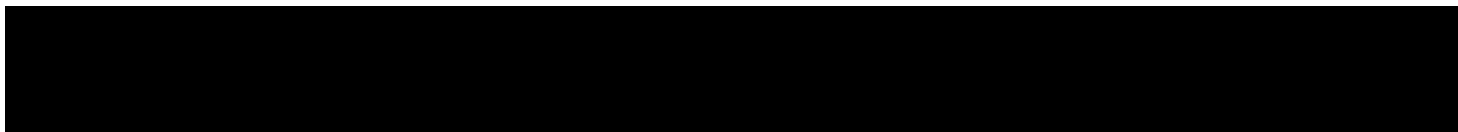
In return for the payment of the premium, and subject to all of the terms of this policy, we agree with you to provide insurance as stated in this policy. The Coverage Parts that are of this policy are listed below. The Advance Premium shown may be subject to adjustment.

Total Advance Premium:



Coverage Part and Insurance Company Summary

Advance Premium



Form Numbers of Coverage Parts, Forms and Endorsements that are a part of this policy and that are not listed in the Coverage Parts.

EH00570605

Agent/Broker Name:

Agency Code:

R T SPECIALTY LLC
180 N STETSON AVENUE
SUITE 4600
CHICAGO, IL 60601

553817

Countersigned by _____
(Where required by law)

Authorized Representative

Date

[Scofield v. Big Dog Treestands, Inc., et. al.](#)

[Case No. 17JE-CC00227](#)

[Bates No.: BD000242](#)

11/05/2014

Form HM 00 10 01 07

Exhibit B

**COMMERCIAL GENERAL LIABILITY (EXCESS - BROAD FORM)
COVERAGE PART - DECLARATIONS****DECLARATIONS****POLICY NO.** 83 ECS OF5710

Previous Policy No. 83 ECS OF5710

This COMMERCIAL GENERAL LIABILITY (EXCESS - BROAD FORM) COVERAGE PART consists of:

- A. This Declarations;
B. Commercial Liability Schedule, if applicable;
C. Commercial General Liability (Excess - Broad Form) Coverage Form; and
D. Any Endorsements issued to be part of this Coverage Part and listed below.

1. **Audit Period is the Policy Period unless otherwise herein stated:** ☐ Semi-Annual ☐ Quarterly ☐ Monthly
☒ Annual ☐ Not subject to Audit

2. **Advance Premium** [REDACTED] which is ☐ A Flat Charge Per Each Policy Period
☒ Adjustable at the end of each Audit Period, Per Premium Computation Endorsement

Minimum Retained Audit Premium [REDACTED]**Minimum Retained Premium** [REDACTED] not subject to adjustment in the event of cancellation by you.**Applicable State Surcharges:** REFER TO SCHEDULE HC1210

Note: charges, if any, are included in item 2. above

3. Limits of Insurance

The Limits of Insurance, subject to all the terms of this policy that apply, are:

Each Occurrence	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
General Aggregate Limit (Other than Products-Completed Operations)	\$2,000,000
Products-Completed Operations Aggregate Limit	\$2,000,000.

4. Self-Insured Retentions

Your self-insured retentions, subject to all the terms of this policy that apply, are:

Each Occurrence Retention	\$25,000
Personal and Advertising Injury Retention	\$25,000
General Aggregate Retention (Other than Products-Completed Operations)	NOT APPLICABLE
Products-Completed Operations Aggregate Retention	NOT APPLICABLE
All coverages (including Products-Completed Operations) Aggregate Retention	NOT APPLICABLE

5. Classification, if any:

REFER TO EXTENSION SCHEDULE

6. Business Description

SPORTING GOODS MFG

7. Form Numbers of Coverage Forms and Endorsements forming a part of this policy:

SEE LISTING OF POLICY PROVISIONS AND ENDORSEMENTS FORMING A PART OF THE POLICY AT ISSUE.

11/05/2014

Form EH 00 57 06 05

Scofield v. Big Dog Treestands, Inc., et. al.
Case No. 17JE-CC00227
Bates No.: BD000243

(c) 2005, The Hartford

Exhibit B

EXCESS LIABILITY DECLARATIONS

Starr Surplus Lines Insurance Company

Chicago, IL
Administrative Office: 399 Park Avenue, 8th Floor, New York, NY 10022

POLICY NUMBER: 1000010769

RENEWAL OF: NEW

PRODUCER NAME: BRECKENRIDGE INSURANCE SERVICES, LLC

ADDRESS: 3870 S LINDBERGH BLVD SUITE 100
ST LOUIS, MO 63127

ITEM 1. NAMED INSURED: BIG DOG TREE STANDS, INC.

ADDRESS: 120 Detroit Parkway
Morton, IL 61550

ITEM 2. POLICY PERIOD: FROM 11/01/2014 **TO** 11/01/2015
12:01 A.M. STANDARD TIME AT THE ADDRESS OF THE NAMED INSURED SHOWN ABOVE.

ITEM 3. COVERAGE: Commercial Excess Liability

ITEM 4. LIMITS OF INSURANCE:

The Limits of Insurance, subject to all the terms of this Policy, are:

- A. \$4,000,000 Each Occurrence
B. \$4,000,000 Other Aggregate(s), Where Applicable
C. \$4,000,000 Products-Completed Operations Aggregate

ITEM 5. "UNDERLYING INSURANCE"

A. First Underlying Insurance Policy(ies)

Insurer

See attached Schedule of Underlying Insurance

Policy No.

Policy Period

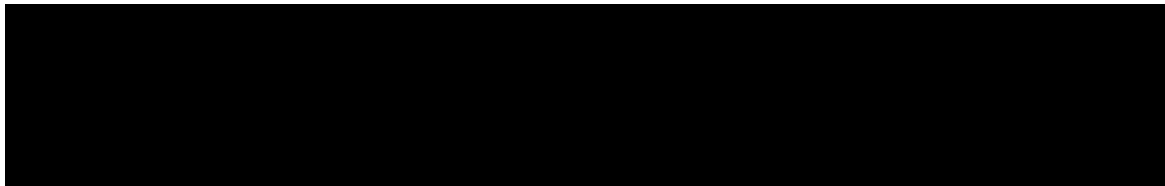
B. Additional Underlying Insurance Policy(ies)

Insurer

Policy No.

Policy Period

ITEM 6. POLICY PREMIUM:



ITEM 7. NOTICES

In the event of an accident, occurrence, wrongful act, claim or suit, that is reasonably likely to involve this Policy, send all pertinent facts to:

Send all Excess Casualty Loss Notices to:
York Risk Services Group, Inc
Attn. OSC
P.O. Box 183188
Columbus, OH 43218-3188
4869excessclaims@yorkrsg.com


Fax: 866-695-3651

After hours emergency service call:
(866) 391-9675

ITEM 8. ENDORSEMENTS ATTACHED:

Title	Form Number
Excess Liability Declarations	SL 101 D 10 08
Excess Liability Policy Schedule Of Underlying Insurance	SL 102 10 08
Excess Liability Policy Form	SL 100 10 08
Cross Suits Exclusion	SL 139 10 08
Employment Related Practices Exclusion	SL 154 10 08
Lead Exclusion	SL 174 10 08
Professional Liability Exclusion	SL 205 10 08
Illinois Changes - Cancellation And Nonrenewal	SL 301 IL 03 09
Exclusion Of Terrorism	SL 346 10 08
Service of Suit Endorsement (Illinois Only)	SL 704 IL 08 10
CV Starr Excess Liability Program Claim Reporting Form	SL CLAIMS NOTICE

The foregoing discloses all hazards insured hereunder known to exist at the inception date of this Policy, unless otherwise stated herein by endorsement on this Policy.

COUNTERSIGNED 10/31/2014 BY 
DATE AUTHORIZED REPRESENTATIVE

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC. and BUCHHEIT
OF HERCULANEUM, INC.

Defendants.

Cause No: 20JE-CC00277

**DEFENDANT BUCHHEIT HERCULANEUM, INC.'S MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION TO DISMISS PURSUANT TO
MISSOURI REVISED STATUTE 537.762**

NOW COMES Defendant BUCHHEIT OF HERCULANEUM, INC. (hereinafter "Buchheit"), by and through its attorneys, and for its Memorandum of Law in Support of its Motion to Dismiss pursuant to Mo. Rev. Stat. § 537.762, states as follows:

INTRODUCTION

Defendant Buchheit hereby moves this Court pursuant to Mo. Rev. Stat. § 537.762 for dismissal of each of Plaintiff's claims against Buchheit. The factual record is clear that Buchheit is nothing more than a downstream seller of a product manufactured by WSTR Holdings, Inc. d/b/a Big Dog Treestands ("Big Dog") which allegedly caused Plaintiff's injuries. Buchheit, therefore, cannot be held liable to Plaintiff pursuant to Missouri's Innocent Seller's Statute, Mo. Rev. Stat. § 537.762. A non-manufacturing seller of an allegedly defective product is not liable for damages under Missouri law when the manufacturer/distributor of the alleged defective product is before the court and from which Plaintiff may seek total recovery. Here, Plaintiff claims that he purchased the subject climbing stick from Buchheit at their Herculanum store. Plaintiff cannot show that Buchheit knew of should have known of any alleged defect. Buchheit

made no representations related to the subject product and is a mere retailer. Buchheit had no control or influence over the design, manufacture, packaging, warnings, instructions, or labeling of the climbing stick. In addition, there is no evidence that the Buchheit did anything that would have created an alleged defect in the product. Buchheit merely allegedly sold the product. Plaintiff has failed allege any evidence to establish a claim against Buchheit in this case. Buchheit did nothing other than allegedly sell the subject product. In fact, Plaintiff has no evidence that Buchheit did anything other than sell the subject product. As such, Buchheit, as a non-manufacturing seller and is not liable to Plaintiff for the allegedly “defective” product under Mo. Rev. Stat. § 537.762. The manufacturer of the climbing stick, Big Dog, is a defendant in the case and has \$5,000,000 of applicable insurance limits, so total recovery for Plaintiff’s claim can be had against Big Dog. Therefore, Buchheit is entitled to dismissal.

FACTUAL BACKGROUND

The case is a refiling of case #17JE-CC00227. Plaintiff filed this product liability case against Big Dog and Buchheit claiming that the subject Big Dog 20’ Hot Foot Climbing Stick, Model BDLS-20, was defective causing him to sustain injuries. (*See Plaintiff’s Petition, Exhibit A*). Plaintiff alleged that the climbing stick “snapped” during the installation when he “grabbed the top section ... to steady his way down.” (*Id. at ¶ 4*). The claims against Buchheit are based solely on its status as the alleged retail seller in the stream of commerce. Specifically, Plaintiff alleges to have purchased the subject climbing stick in 2014 from Buchheit’s store in Herculaneum, Missouri, but he does not have any proof of purchase for the subject product. (*See Plaintiff’s Deposition Transcript, Exhibit B, at p. 23*).

The manufacturer/distributor of the subject climbing stick is a named party in this case. WSTR Holdings, Inc. has defended this case as it manufacturers/distributes Big Dog Treestands.

Big Dog has confirmed that the subject climbing stick was manufactured by a factory overseas for Big Dog Treestands and distributed to the United States by Big Dog Treestands. (*See Affidavit of T. Royer, Exhibit D, at ¶ 6; see also Affidavit of P. Jannin, Exhibit C, at ¶¶ 4-5*). The subject product was identified as a Big Dog Treestand product on the display model, box and climbing stick unit itself. (*See id.*).

As a non-manufacturing retail seller, Buchheit had no control or influence over the design, manufacturer, construction, warnings, instructions or quality of the subject climbing stick. (*See Exhibit C, at ¶¶ 6-14*). In particular, Buchheit had no involvement with the design, manufacturer, assembly or packaging of the subject climbing stick, and there is no evidence that Buchheit did anything other than sell the subject climbing stick. (*Id.*). Furthermore, at no time did Buchheit have any involvement with the design of the climbing sticks distributed by Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20. (*Id. at ¶ 6; see also, Exhibit D, at ¶ 8*). At no time did Buchheit have any involvement with the material selection of any part of any climbing stick sold by Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20. (*See Exhibit C, at ¶ 7; Exhibit D, at ¶ 10*).

Also, at no time did Buchheit have any involvement with the instructions, labeling, packaging, production or quality assurance for any climbing sticks (or treestands) sold by Big Dog Treestands, including the Big Dog 20' Hot Foot Climbing Stick, Model BDLS-20. (*See Exhibit C, at ¶¶ 9-12, 14; Exhibit D, at ¶¶ 12-15, 17*). Buchheit had no involvement in testing of any climbing sticks (or treestands) to confirm compliance with applicable TMS/ASTM industry standards. (*See Exhibit C, at ¶ 13, Exhibit D, at ¶ 16*).

Buchheit's name has never been placed on any climbing stick (or treestands) distributed by Big Dog Treestands, or any warnings and instructions, labeling, or packaging for climbing

sticks (or treestands) sold by Big Dog Treestands at any time. (See *Exhibit C*, at ¶¶ 15-16). Buchheit has never sold a climbing stick (or treestand) bearing the Buchheit name and/or a Buchhit brand name. (*Id.*). The subject climbing sticks, as with all other climbing sticks (or treestands) distributed by Buchheit, was sealed in a cardboard box before it was shipped to Buchheit for sale in its stores. (*Id.* at ¶ 17).

The only connection that Buchheit has to the subject climbing stick is that it sold this model climbing stick in its stores. Plaintiff admitted that Buchheit did nothing other than sell the subject climbing stick and that Buchheit did nothing wrong.

- Q. Other than Buchheit having a sale, you making that purchase –
 A. That was it, yeah.
 Q. -- they did nothing wrong, as far as you're concerned?
 A. No.
 Q. Okay. That's correct?
 A. Yes.

(See *Exhibit B*, at p. 97). In fact, Plaintiff acknowledged that he made the decision to purchase the subject climbing sticks on his own without any representations begin made by any Buchheit employees to him about the climbing sticks:

Q. The retailer in this case, do you hold them responsible other than the fact that they sold this product, is there anything specifically they did to you, any representations they made to you besides the fact that they – that you made the purchase there?

A. You mean like verbally?

Q. Sure.

A. No.

Q. Did they make any express representations about the climbing stick about what it can and cannot do or give you any direction about how to use it?

A. No, not verbally. I mean no more than what you assume by somebody carrying a product.

Q. Sure. But other than the fact that the retailer simply –

A. I never talked to any of the associates about it or anything.

* * *

A. I never conversed with any of them about any of it, so verbally I never had a conversation with anybody, so...

Q. Okay. And there was no, you know, marketing brochures?

A. No. No.

(*Id. at pp. 96-97*). Buchheit, therefore, is a pure seller of the product which Plaintiff alleges caused his accident and injuries. Plaintiff named Big Dog, the manufacturer/distributor of the subject climbing stick. Big Dog can satisfy any verdict entered in favor of Plaintiff. (See *WSTR's Declaration Pages of Liability Insurance, attached hereto as Exhibit E*). There are no facts or circumstances upon which a verdict might be reached against Buchheit other than its status as a seller in the stream of commerce of the subject climbing sticks. (See *Exhibit C, at ¶ 18*).

LAW AND ARGUMENTS

A. THE MISSOURI "INNOCENT" SELLER STATUTE SUBSTANTIVELY PRECLUDES LIABILITY AGAINST BUCHHEIT.

Missouri Product Liability law imposes a duty upon a manufacturer not to introduce an unreasonably dangerous product into commerce, whether the danger arises from defective manufacture, defective design, or a failure to warn of danger. Mo. Rev. Stat. § 537.760; *Magnuson by Mabe v. Kelsey-Hayes Co.*, 844 S.W.2d 448, 455 (Mo. Ct. App. 1992). It is well settled in Missouri that a non-manufacturing seller of a defective product is not liable for damages in tort if that party in the chain of distribution can establish that there is no evidence to establish any possibility that a verdict might be reached against the seller, other than his status as a mere seller in the stream of commerce. Mo. Rev. Stat. § 537.762. As such, the "innocent" seller statute allows a seller in the stream of commerce to be dismissed from a product liability case if liability is based solely on the status of being a seller. *Id.* Mo. Rev. Stat. § 537.762 provides as follows:

1. A defendant whose liability is based solely on his status as a seller in the stream of commerce may be dismissed from a products liability claim as provided in this section.
2. This section shall apply to any products liability claim in which another defendant, including the manufacturer, is properly before the court and from whom total recovery may be had for plaintiff's claim.

3. A defendant may move for dismissal under this section within the time for filing an answer or other responsive pleading unless permitted by the court at a later time for good cause shown. The motion shall be accompanied by an affidavit which shall be made under oath and shall state that the defendant is aware of no facts or circumstances upon which a verdict might be reached against him, other than his status as a seller in the stream of commerce.

4. The parties shall have sixty days in which to conduct discovery on the issues raised in the motion and affidavit. The court for good cause shown, may extend the time for discovery, and may enter a protective order pursuant to the rules of civil procedure regarding the scope of discovery on other issues.

5. Any party may move for a hearing on a motion to dismiss under this section. If the requirements of subsections 2 and 3 of this section are met, and no party comes forward at such a hearing with evidence of facts which would render the defendant seeking dismissal under this section liable on some basis other than his status as a seller in the stream of commerce, the court shall dismiss without prejudice the claim as to that defendant.

6. An order of dismissal under this section shall be interlocutory until final disposition of plaintiff's claim by settlement or judgment and may be set aside for good cause shown at any time prior to such disposition.

As such, in order to shield itself from liability under the Seller's Statute, a product retailer must establish two facts: (1) the defendant's liability is based solely on its status as seller in the stream of commerce; and (2) other defendants, including the product manufacturers, are properly before the court that could satisfy a successful verdict. Mo. Rev. Stat. § 537.762. The statute applies to bar both negligence and strict liability claims against product retailers/sellers. Mo. Rev. Stat. § 537.762(2).

The Missouri Supreme Court in *Gramex Corp. v. Green Supply*, 89 S.W.3d 432, 446 (Mo. banc 2002) characterized this statute as both substantive and procedural, noting "[i]t is clear that our legislature sought to protect 'innocent' wholesalers and retailers from the perils of products liability claims, both procedurally and substantively by section 537.762." The Missouri Supreme Court explained:

Although at first glance this statute appears to be merely a procedural device to

save wholesalers and retailers from the significant costs of product liability litigation, inherent in the statute is a substantive public policy choice of significant importance. To the extent that a plaintiff can otherwise obtain 'total recovery,' all liability of a downstream seller, who would otherwise be jointly and severally liable to plaintiff for damages and subject to contribution from the other defendants, is shifted to upstream defendants, including the manufacturer.

Gramex, 89 S.W.3d at 445 (emphasis in the original). Following this decision more recent federal courts have followed *Gramex* and found that the statute has substantive application where there is no reasonable basis for recovery against a retailer defendant who is a seller in the stream of commerce. See *Wichmann v. The Proctor & Gamble Manuf. Co.*, 2006 U.S. Dist. LEXIS 89407, (E.D. Mo. Dec. 11, 2006)

When the case involves both strict liability and negligence claims, the plaintiff must establish factual basis in law or fact that would entitle him to a verdict against a mere seller. In *Wichmann*, the plaintiff alleged both strict liability and negligence claims against the retailer because it sold the allegedly defective tampons. The plaintiff argued that the retailer was not sued solely in its capacity as a seller of the alleged defective tampons, but rather was also liable to plaintiffs in negligence because it failed to test or observe the manner of use of the tampons, and failed to advise and warn plaintiffs of the risk of overnight use of the tampon which contained rayon as a component part. *Wichmann*, 2006 U.S. Dist. LEXIS 89407, *6-7. The district court held that dismissal was still warranted because there was not a basis in law or fact to establish liability:

This argument fails because there is no reasonable basis in law or fact which would impose a duty on the part of Dierbergs, as the seller of the subject tampons, to inspect or test the tampons or to warn Plaintiffs of the risks involved in the use of the tampons.

... Warnings regarding the use of tampons have been mandated by federal regulation. 21 C.F.R. § 801.430(d)(3). Thus, the allegations regarding Dierbergs' duty vis a vis tampon testing and usage would require Dierbergs to go beyond the federally required warnings, (which are contained on the product packaging itself)

and engage in highly scientific testing and experimentation. The absurdity of requiring a grocer to test the products it sells and report to its customers the risks of all of those products establishes the lack of a reasonable basis in fact or law of a duty owed by Dierbergs to Plaintiffs. Without the requisite duty, there can be no negligence claim against Dierbergs.

Wichmann, 2006 U.S. Dist. LEXIS 89407, *7.

When a moving retailer seeks dismissal and avers that it is merely a seller in the stream of commerce, the other party should come forward with evidence that the defendant seeking dismissal is liable on some basis other than his status as a seller. Mo. Rev. Stat. § 537.762. In this case, Plaintiff has failed to establish any evidence to support a claim against Buchheit other than a claim that Buchheit was the mere seller of the subject product. There is no evidence that Buchheit had any knowledge of any alleged defect with the subject climbing sticks and Plaintiff has yet to even identify the alleged defect or alleged negligence against Buchheit. Buchheit would have received the subject climbing sticks in a sealed package from the other Defendant. It was sold as received in its retail stores and through the internet. Plaintiff acknowledges that the subject climbing stick was purchased new and has not alleged any facts to support that the product appeared to have any defect at the time of purchase. In fact, Plaintiff testified under oath that he had no evidence that Buchheit did anything other than sell the product at issue.

B. PLAINTIFF'S CLAIM AGAINST BUCHHEIT IS BASED SOLELY ON BUCHHEIT'S STATUS AS A SELLER IN THE STREAM OF COMMERCE.

The first requirement to satisfy the Innocent Seller Statute is that Defendant must show that its liability is based on its status as a seller in the stream of commerce. Mo. Rev. Stat. § 537.762; *Gramex*, 89 S.W.3d at 445. In this case, there is a complete factual record which demonstrates that Buchheit is nothing more than a seller of the product Plaintiff claims caused his injuries. There is no evidence in the record that Buchheit had any input into the design or manufacture of the product at issue, or any of the warnings labels or instructions which

accompanied those products. In fact, the record demonstrates that Buchheit had no involvement other than selling the product in its stores.

In this case, Buchheit has clearly set forth evidence to support dismissal as an “innocent” seller under Missouri law related to Plaintiff’s claims against it in their entirety. Buchheit has provided the requisite affidavit to support its dismissal. (*See Exhibit C*). The manufacturer of the subject product is Big Dog. Buchheit had no control or influence over the design, manufacture, construction, warnings, instructions or quality of the subject climbing stick. In particular, Buchheit had no involvement with the design, manufacturer, assembly or packaging of the subject climbing stick, and there is no evidence that Buchheit did anything other than sell the subject climbing stick. Buchheit had no involvement with the material selection of any part of any climbing stick sold by Big Dog, including the Big Dog 20’ Hot Foot Climbing Stick, Model BDLS-20. Buchheit had no involvement with the instructions, labeling, packaging, production or quality assurance for any climbing sticks (or treestands) sold by Big Dog, including the Big Dog 20’ Hot Foot Climbing Stick, Model BDLS-20. In addition, Buchheit had no involvement in testing of any climbing sticks (or treestands) to confirm compliance with applicable TMS/ASTM industry standards.

Buchheit’s name has never been placed on any climbing stick (or treestands) distributed by Big Dog, or any warnings and instructions, labeling, or packaging for climbing sticks (or treestands) sold by Big Dog at any time. Buchheit has never sold a climbing stick (or treestand) bearing the Buchheit name and/or a Buchheit brand name. The subject climbing sticks, as with all other climbing sticks (or treestands) distributed by Buchheit, was sealed in a cardboard box before it was shipped to Buchheit for sale in its stores. The only connection that Buchheit has to the subject climbing stick is that it sold this model climbing stick in its stores. Plaintiff admitted

that Buchheit did nothing other than sell the subject climbing stick and that Buchheit did nothing wrong.

Buchheit's liability in this case is therefore based entirely upon its status as a seller of this product which it placed in the stream of commerce, and the record demonstrates that Buchheit has satisfied the Innocent Seller's Statute's first requirement. There are no facts or circumstances upon which a verdict might be reached against Buchheit other than its status as a seller in the stream of commerce of the subject climbing sticks. Buchheit, therefore, is a pure seller of the product which Plaintiff alleges caused his accident and injuries and should be dismissed.

C. THE PRODUCT MANUFACTURER IS BEFORE THE COURT AND CAN SATISFY A SUCCESSFUL VERDICT.

The second requirement to satisfy the Innocent Seller's Statute is that other defendants, including the product manufacturers, are properly before the court that could satisfy a successful verdict. Mo. Rev. Stat. § 537.762; *Gramex*, 89 S.W.3d at 445. Here, there is no question that this element is satisfied. First, the manufacturer/distributor of the subject climbing stick which Plaintiff allegedly used is an active Defendant before the Court in this case. (See *Exhibit A*). The manufacturing Defendant, Big Dog has provided evidence that it can fully satisfy any verdict through declarations of insurance coverage. (See *Exhibit E*). There is no evidence in the record that Big Dog is incapable of satisfying any verdict in favor of Plaintiff. As such, dismissal of Buchheit is appropriate.

CONCLUSION

Under Missouri law, Buchheit is merely the product seller of the alleged defective product, with Co-Defendant as the manufacturer/distributor. As a non-manufacturing seller or "innocent" seller, there is no evidence that Buchheit knew or should have known of any defect. The purpose of the retail seller statute is to give innocent sellers who did nothing wrong other than pass on a

product in the chain of commerce an opportunity to be dismissed from the case. Buchheit has now shown that the elements of the statute have been met. Plaintiff cannot meet his burden of proof. For the foregoing reasons, Defendant Buchheit of Herculaneum, Inc. respectfully requests this Court grant its Motion and dismiss Plaintiff's Petition in its entirety with prejudice.

Respectfully submitted,

EVANS AND DIXON, L.L.C.

By: /s/ Brian R. Shank
Brian R. Shank (#59955)
Metropolitan Square
211 North Broadway, Ste. 2500
St. Louis, MO 63102
Phone: (314) 621-7755
Fax: (314) 621-3136
bshank@evans-dixon.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 10th day of June, 2020.

/s/Brian R. Shank

4467691

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

VS.

Cause No.: 20JE-CC00277

WSTR HOLDINGS, INC. D/B/A BIG DOG)
TREESTANDS, INC.)

Division No.: 5

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

NOTICE OF HEARING

Comes now defendant Buchheit of Herculaneum, Inc., by and through its undersigned counsel, and gives notice that it will call its Motion to Dismiss for hearing via Zoom video platform, in Division 5 of the Circuit Court of the County of Jefferson, Missouri, on Thursday, August 13, 2020 at 10:30 a.m., or as soon thereafter as may be heard.

Respectfully submitted,

EVANS & DIXON, L.L.C.

By: /s/ Brian R. Shank

Brian R. Shank (#59955)
211 North Broadway, Suite 2500
St. Louis, MO 63102
Phone: (314) 621-7755
Fax: (314) 621-3136
bshank@evans-dixon.com
Attorneys for defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 29th day of June, 2020.

/s/ Brian R. Shank

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

VS.

Cause No.: 20JE-CC00277

WSTR HOLDINGS, INC. D/B/A BIG DOG)
TREESTANDS, INC.)

Division No.: 5

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

MOTION FOR TRIAL SETTING

Comes now plaintiff Ben Scofield, by and through his undersigned counsel and respectfully moves this Court make and enter its order setting the above styled cause of action for trial as a number one setting.

Respectfully submitted,

LAW OFFICE OF DANIEL T. RYAN, LLC

By: /S/Daniel T. Ryan
Daniel T. Ryan, #38744
Attorney for Plaintiff
3008 Sutton Blvd., Suite 100
Maplewood, MO 63143
314.222.7717
314.932.2688 (facsimile)
dan@danryanlawoffice.com

Attorney for plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 1st day of July, 2020.

/s/ Daniel T. Ryan

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

WSTR HOLDINGS, INC. D/B/A BIG DOG)
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

Cause No.: 20JE-CC00277

Division No.: 5

NOTICE OF HEARING

Comes now plaintiff Ben Scofield, by and through his undersigned counsel, and gives notice that it will call its Motion for Trial Setting and Scheduling Order for hearing via Zoom video platform, in Division 5 of the Circuit Court of the County of Jefferson, Missouri, on Thursday, August 13, 2020 at 10:30 a.m., or as soon thereafter as may be heard.

Respectfully submitted,

LAW OFFICE OF DANIEL T. RYAN, LLC

By: /S/Daniel T. Ryan
Daniel T. Ryan, #38744
Attorney for Plaintiff
3008 Sutton Blvd., Suite 100
Maplewood, MO 63143
314.222.7717
314.932.2688 (facsimile)
dan@danryanlawoffice.com

Attorney for plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 1st day of July, 2020.

/s/ Daniel T. Ryan

Exhibit A

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG

TREESTANDS, INC. and BUCHHEIT

OF HERCULANEUM, INC.

Defendants.

CERTIFICATE OF SERVICE

Come now defendants, and state that on the 7th day of July, 2020, a copy in Word format of their expert interrogatories and requests for production were sent by electronic mail to:

dan@danryanlawoffice.com.

Respectfully submitted,

EVANS & DIXON, L.L.C.

By: /s/ Brian R. Shank

Brian R. Shank (#59955)

211 North Broadway, Suite 2500

St. Louis, MO 63102

Phone: (314) 621-7755

Fax: (314) 621-3136

bshank@evans-dixon.com

Attorneys for defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 7th day of July, 2020.

/s/ Brian R. Shank

4498074

Exhibit A

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG

TREESTANDS, INC. and BUCHHEIT

OF HERCULANEUM, INC.

Defendants.

DEFENDANTS' RE-NOTICE OF TAKING DEPOSITION
DUCES TECUM OF WILLIAM CARDEN

TO: LAW OFFICE OF DANIEL T. RYAN, LLC
DANIEL T. RYAN, #38744
3008 Sutton Blvd., Suite 100
Maplewood, MO 63143
T: (314) 222-7717
dan@danryanlawoffice.com

PLEASE TAKE NOTICE that pursuant to the Local Court Rules, the undersigned attorneys for Defendants, will take the deposition of WILLIAM CARDEN, on ***Wednesday, August 12, 2020 at 10:00 a.m. (EST)***, and continuing thereafter until completed via video conference.

The expert is requested to bring with him to his deposition any and all documents, photographs and videos in his expert file pertaining to the subject matter and to any opinions he intends to offer at trial, all testing materials/data/video pertaining to the subject matter and to any opinions he intends to offer at trial, and all other materials the expert has/will rely upon to formulate an opinion, including all reports, articles/treaties, billing records, the expert's CV, and a list of cases the expert has testified in for the period of the last four years.

Failure to comply with this demand may subject you and the above-named party to this action to such sanctions as the Rules of Court may allow and the Court shall direct.

Respectfully submitted,

EVANS & DIXON, L.L.C.

By: /s/ Brian R. Shank
Brian R. Shank (#59955)
211 North Broadway, Suite 2500
St. Louis, MO 63102
Phone: (314) 621-7755
Fax: (314) 621-3136
bshank@evans-dixon.com
Attorneys for defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 7th day of July, 2020.

/s/ Brian R. Shank

4498359

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG)
TREESTANDS, INC.)

and)

BUCHHEIT OF HERCULANEUM, INC.)

Defendants.)

**CROSS NOTICE OF VIDEO TAPED TRIAL DEPOSITION
OF WILLIAM CARDEN**

PLEASE TAKE NOTICE that pursuant to the Local Court Rules, the undersigned attorney for Plaintiff, will take the Cross Video Taped Trial Deposition of WILLIAM CARDEN, on ***Wednesday, August 12, 2020 at 10:00 a.m. (EST)***, and continuing thereafter until completed via video conference.

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing document has been served on all counsel of record on this 9th day of July, 2020 via email.

/s/Daniel T. Ryan

CC: Magna Legal Service

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

RESPONSE TO MOTION FOR TRIAL SETTING

COME NOW the undersigned, counsel for Defendants WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC. and BUCHHEIT OF HERCULANEUM, INC., hereby concur in the relief requested in Plaintiff's Motion for Trial Setting, with the request that the number one setting for trial not be any sooner than 120 days.

Respectfully submitted,

Motion to be taken up
on 8/13/20 at 1030.

EVANS AND DIXON, L.L.C.

So Ordered:



Jul 10, 2020, 5:04 pm
Victor J. Melenbrink
Circuit Judge, Div. 5

By: /s/ Brian R. Shank

Brian R. Shank (#59955)
Metropolitan Square
211 North Broadway, Ste. 2500
St. Louis, MO 63102
Phone: (314) 621-7755
Fax: (314) 621-3136
bshank@evans-dixon.com

and

CLARK HILL PLC

MILTON S. KARFIS

Michigan Bar No. P55673

STEPHANIE I. ANDERSON

Michigan Bar No. P67493

151 South Old Woodward, Ste. 200

Birmingham, MI 48009

Phone: (313) 965-8802

Fax: (313) 309-6922

mkarfis@clarkhill.com

sanderson@clarkhill.com

ATTORNEYS FOR DEFENDANTS

BIG DOG TREESTANDS, INC. AND BUCHHEIT

OF HERCULANEUM, INC.

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing document has been served on all counsel of record on this 10th day of July 2020, through the Court's ECF system.

/s/Brian R. Shank

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

WSTR HOLDINGS, INC. d/b/a BIG DOG

TREESTANDS, INC. and BUCHHEIT

OF HERCULANEUM, INC.

Defendants.

Cause No: 20JE-CC00277

CERTIFICATE OF SERVICE

I hereby certify that a copy of Plaintiff's Answers and Response to Defendant's Expert Interrogatories & Request for Production of Documents were emailed in Word format to bshand@evans-dixon.com, attorney for defendant, this 29th day of July, 2020.

LAW OFFICE OF DANIEL T. RYAN, LLC

By: /S/Daniel T. Ryan

Daniel T. Ryan, #38744

Attorney for Plaintiff

3008 Sutton Blvd., Suite 100

Maplewood, MO 63143

314.222.7717

314.932.2688 (facsimile)

dan@danryanlawoffice.com

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

MOTION TO ADMIT ATTORNEY STEPHANIE M. ANDERSON PRO HAC VICE

COME NOW the undersigned, counsel for Defendants WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC. and BUCHHEIT OF HERCULANEUM, INC., hereby moves the Court for admission of attorney Stephanie M. Anderson, as visiting attorney appearing on behalf of defendants pursuant to Rule 9.03. In support of said Motion, the undersigned hereby states as follows:

1. Stephanie M. Anderson, is a member in good standing of the Michigan Bar Association and is also admitted to practice before the United States District Court for the Eastern District of Michigan. Ms. Anderson, nor members of her firm, are under suspension or disbarment by any Court.
2. Ms. Anderson is not under disbarment by the highest Court of any state and is a member of good standing of the Michigan Bar Association. Ms. Anderson designates the undersigned, Brian R. Shank, a member of the Missouri bar having an office in St. Louis, Missouri, as associate counsel.

3. A receipt from the Clerk of the Supreme Court acknowledging receipt of \$410.00 as required by Rule 6.01(m), Affidavit of Stephanie M. Anderson, and Certificate of Good Standing by Ms. Anderson are attached hereto as Exhibit A.
4. Ms. Anderson agrees by her appearance to comply with the rules of professional conduct as set forth in Rule 4 and understand they are subject to discipline by the courts of this State regarding the above-referenced matter.
5. A proposed order granting the instant motion is attached hereto as Exhibit B.

WHEREFORE, Defendants WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC. and BUCHHEIT OF HERCULANEUM, INC., pray for an Order (a) granting its motion for admission of Stephanie M. Anderson *pro hac vice*; (b) allowing Defendants to appear of record as co-counsel and participate *pro hac vice* before this Court, and (c) granting such other relief as the Court deems proper.

Respectfully submitted,

EVANS AND DIXON, L.L.C.

By: /s/ Brian R. Shank
Brian R. Shank (#59955)
Metropolitan Square
211 North Broadway, Ste. 2500
St. Louis, MO 63102
Phone: (314) 621-7755
Fax: (314) 621-3136
bshank@evans-dixon.com

and

CLARK HILL PLC

MILTON S. KARFIS

Michigan Bar No. P55673

STEPHANIE I. ANDERSON

Michigan Bar No. P67493

151 South Old Woodward, Ste. 200

Birmingham, MI 48009

Phone: (313) 965-8802

Fax: (313) 309-6922

mkarfis@clarkhill.com

sanderson@clarkhill.com

ATTORNEYS FOR DEFENDANTS

BIG DOG TREESTANDS, INC. AND BUCHHEIT

OF HERCULANEUM, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 30th day of July, 2020.

/s/ Brian R. Shank

4532303

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

AFFIDAVIT OF ATTORNEY STEPHANIE M. ANDERSON

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

Before me, the undersigned authority, personally appeared attorney STEPHANIE M. ANDERSON, who, first duly sworn, upon her oath and as an officer of Michigan state and federal court, affirms and deposes as follows:

1. My name is STEPHANIE M. ANDERSON. I am a practicing attorney in the State of Michigan, an officer of the Michigan state and certain Federal Courts, and fully competent to give this Affidavit.
2. That I am a resident of the State of Michigan, and a Senior Attorney of the law firm of CLARK HILL, P.L.C., with a business address of 151 South Old Woodward Avenue, Ste. 200, Birmingham, Michigan 48009.
3. The undersigned is admitted to practice in the State of Michigan, admitted in 2004; the United States District Court for the Eastern District of Michigan, admitted in 2004; the

- United States District Court for the Central District of Illinois, admitted in 2011; the United States District Court for the Western District of Tennessee, admitted in 2014; United States District Court for the Eastern District of Wisconsin, admitted in 2014; United States District Court Northern District of Florida, admitted in 2014; and United States District Court Northern District of Ohio, admitted in 2014; United States District Court for the Southern District of Indiana, admitted in 2016; United States District Court for the Southern District of Iowa, admitted in 2016; United States District Court for the Eastern District of Missouri, admitted in 2016; United States District Court for the Northern District of New York, admitted in 2016; United States District Court for the Eastern District of Oklahoma, admitted in 2016; United States District Court for the Western District of New York, admitted in 2017; and United States District Court for the Western District of Michigan, admitted in 2017.
4. That affiant is not currently suspended, disbarred or subject to disciplinary proceedings in any court.
 5. That affiant has been retained by Defendants, WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC. and BUCHHEIT OF HERCULANEUM, INC., in the above-entitled cause of action to act as co-counsel with current counsel of record, attorney BRIAN R. SHANK, licensed to practice in the State of Missouri, under Missouri Bar No 59955, and a member of good standing with the Missouri Bar Association, and a member of the law firm of EVANS & DIXON, with a business address of Metropolitan Square, 211 North Broadway, Ste. 2500, St. Louis, MO 63102.
 6. That affiant has filed her entry of Appearance in the above-entitled cause of action simultaneously herewith, and agrees to comply with the Rules of Professional Conduct

as set forth in Rule 4 of the Missouri Supreme Court Rules, and become subject to discipline by the courts of this state.

Further affiant sayeth not.



STEPHANIE M. ANDERSON

AFFIANT

9th In witness whereof, I have hereunto subscribed my name and affixed my official seal this day of July, 2020.



JENNIFER R. HOWARD

Notary Public

State of Michigan, County of Lapeer

Acting in County of Oakland

My Commission Expires: 8-3-26

JENNIFER R. HOWARD
NOTARY PUBLIC, STATE OF MI
COUNTY OF LAPEER
MY COMMISSION EXPIRES Aug 3, 2026
ACTING IN COUNTY OF

Oakland

This is an official document issued by the State Bar of Michigan and will be valid for 45 days from the date on this certificate. While the State Bar of Michigan operates under the advisement of government officials during the COVID-19 pandemic, Certificates of Good Standing will only be issued in this manner and sent by email. No paper copies will be issued or mailed until further notice.

State Bar of Michigan

Certificate of Good Standing

This certifies that Stephanie I. Marino Anderson, P67493 of Birmingham, Michigan is an active member of the State Bar of Michigan in good standing.

He/She was admitted to practice in Michigan on November 9, 2004 in Macomb County and became a member of the State Bar of Michigan on November 15, 2004.



Janet K. Welch, Executive Director
June 29, 2020



CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102

BETSY AUBUCHON
CLERK

TELEPHONE
(573) 751-4144

June 23, 2020

This will hereby acknowledge receipt of \$820 as required by Rule 6.01(m) for Milton S. Karfis and Stephanie M. Anderson, appearing in Scofield v. WSTR Holdings, Inc. d/ b/ a Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc., Case No. 20JE-CC00277, before the Circuit Court of Jefferson County, State of Missouri.

A handwritten signature in cursive script that reads "Betsy AuBuchon".

Betsy AuBuchon, Clerk

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

MOTION TO ADMIT ATTORNEY MILTON S. KARFIS PRO HAC VICE

COME NOW the undersigned, counsel for Defendants WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC. and BUCHHEIT OF HERCULANEUM, INC., hereby moves the Court for admission of attorney Milton S. Karfis, as visiting attorney appearing on behalf of defendants pursuant to Rule 9.03. In support of said Motion, the undersigned hereby states as follows:

1. Milton S. Karfis, is a member in good standing of the Michigan Bar Association and is also admitted to practice before the United States District Court for the Eastern District of Michigan. Mr. Karfis, nor members of his firm, are under suspension or disbarment by any Court.
2. Mr. Karfis is not under disbarment by the highest Court of any state and is a member of good standing of the Michigan Bar Association. Mr. Karfis designates the undersigned, Brian R. Shank, a member of the Missouri bar having an office in St. Louis, Missouri, as associate counsel.

3. A receipt from the Clerk of the Supreme Court acknowledging receipt of \$410.00 as required by Rule 6.01(m), Affidavit of Milton S. Karfis, and Certificate of Good Standing by Mr. Karfis are attached hereto as Exhibit A.
4. Mr. Karfis agrees by his appearance to comply with the rules of professional conduct as set forth in Rule 4 and understand they are subject to discipline by the courts of this State regarding the above-referenced matter.
5. A proposed order granting the instant motion is attached hereto as Exhibit B.

WHEREFORE, Defendants WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC. and BUCHHEIT OF HERCULANEUM, INC., pray for an Order (a) granting its motion for admission of Milton S. Karfis *pro hac vice*; (b) allowing Defendants to appear of record as co-counsel and participate *pro hac vice* before this Court, and (c) granting such other relief as the Court deems proper.

Respectfully submitted,

EVANS AND DIXON, L.L.C.

By: /s/ Brian R. Shank
Brian R. Shank (#59955)
Metropolitan Square
211 North Broadway, Ste. 2500
St. Louis, MO 63102
Phone: (314) 621-7755
Fax: (314) 621-3136
bshank@evans-dixon.com

and

CLARK HILL PLC

MILTON S. KARFIS

Michigan Bar No. P55673

STEPHANIE I. ANDERSON

Michigan Bar No. P67493

151 South Old Woodward, Ste. 200

Birmingham, MI 48009

Phone: (313) 965-8802

Fax: (313) 309-6922

mkarfis@clarkhill.com

sanderson@clarkhill.com

ATTORNEYS FOR DEFENDANTS

BIG DOG TREESTANDS, INC. AND BUCHHEIT

OF HERCULANEUM, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 30th day of July, 2020.

/s/ Brian R. Shank

4532283

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

AFFIDAVIT OF ATTORNEY MILTON S. KARFIS

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

Before me, the undersigned authority, personally appeared attorney MILTON S. KARFIS, who, first duly sworn, upon his oath and as an officer of Michigan state and federal court, affirms and deposes as follows:

1. My name is MILTON S. KARFIS. I am a practicing attorney in the State of Michigan, an officer of the Michigan state and certain Federal Courts, and fully competent to give this Affidavit.
2. That I am a resident of the State of Michigan, and a Member of the law firm of CLARK HILL, P.L.C., with a business address of 151 South Old Woodward Avenue, Ste. 200, Birmingham, Michigan 48009.
3. The undersigned is admitted to practice in the State of Michigan, admitted in 1996; the United States District Court for the Eastern District of Michigan, admitted in 1996;

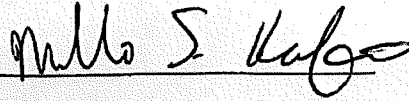
U.S. Court of Appeals, Sixth Circuit, admitted in 1998; the United States District Court for the Western District of Michigan in 2006; the United States District Court for the Northern District of New York, admitted in 2010; the United States District Court for the Central District of Illinois, admitted in 2011; the United States District Court for the Western District of Tennessee, admitted in 2013; United States District Court for the Western District of New York, admitted in 2014; United States District Court for the Eastern District of Missouri, admitted in 2014; U.S. Court of Appeals, Tenth Circuit, admitted in 2015; U.S. Court of Appeals, Fifth Circuit, admitted in 2015; United States District Court Northern District of Alabama, admitted in 2015; United States District Court for the Western District of Oklahoma, admitted in 2016; United States District Court for the Eastern District of Oklahoma, admitted in 2016; U.S. Court of Appeals, Third Circuit, admitted in 2016; United States District Court for the Eastern District of Pennsylvania, admitted in 2017; and United States District Court for the Western District of Pennsylvania, admitted in 2017.

4. That affiant is not currently suspended, disbarred or subject to disciplinary proceedings in any court.
5. That affiant has been retained by Defendants, WSTR HOLDINGS, INC. D/B/A BIG DOG TREESTANDS, INC. and BUCHHEIT OF HERCULANEUM, INC., in the above-entitled cause of action to act as co-counsel with current counsel of record, attorney BRIAN R. SHANK, licensed to practice in the State of Missouri, under Missouri Bar No 59955, and a member of good standing with the Missouri Bar Association, and a member of the law firm of EVANS & DIXON, with a business address of Metropolitan Square, 211 North Broadway, Ste. 2500, St. Louis, MO 63102.

address of Metropolitan Square, 211 North Broadway, Ste. 2500, St. Louis, MO 63102.

6. That affiant has filed his entry of Appearance in the above-entitled cause of action simultaneously herewith, and agrees to comply with the Rules of Professional Conduct as set forth in Rule 4 of the Missouri Supreme Court Rules, and become subject to discipline by the courts of this state.

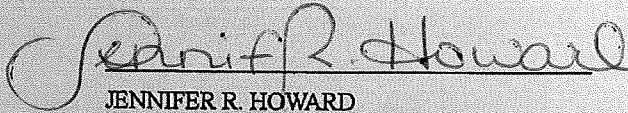
Further affiant sayeth not.



MILTON S. KARFIS

AFFIANT

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 28th day of July, 2020.



JENNIFER R. HOWARD

Notary Public

State of Michigan, County of Lapeer

Acting in County of Oakland

My Commission Expires: 8-3-26

Clark Hill\36755314761\260046128.v1-7/6/20

This is an official document issued by the State Bar of Michigan and will be valid for 45 days from the date on this certificate. While the State Bar of Michigan operates under the advisement of government officials during the COVID-19 pandemic, Certificates of Good Standing will only be issued in this manner and sent by email. No paper copies will be issued or mailed until further notice.

State Bar of Michigan

Certificate of Good Standing

This certifies that Milton S. Karfis, P55673 of Birmingham, Michigan is an active member of the State Bar of Michigan in good standing.

He/She was admitted to practice in Michigan on November 12, 1996 in Wayne County and became a member of the State Bar of Michigan on November 14, 1996.



Janet K. Welch, Executive Director
June 29, 2020



CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102

BETSY AUBUCHON
CLERK

TELEPHONE
(573) 751-4144

June 23, 2020

This will hereby acknowledge receipt of \$820 as required by Rule 6.01(m) for Milton S. Karfis and Stephanie M. Anderson, appearing in Scofield v. WSTR Holdings, Inc. d/ b/ a Big Dog Treestands, Inc. and Buchheit of Herculaneum, Inc., Case No. 20JE-CC00277, before the Circuit Court of Jefferson County, State of Missouri.

A handwritten signature in cursive script that reads "Betsy AuBuchon".

Betsy AuBuchon, Clerk

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

**ORDER GRANTING DEFENDANTS' CONSENT MOTION
TO ADMIT ATTORNEY STEPHANIE M. ANDERSON *PRO HAC VICE***

By consent, and being fully advised in the premises, the motion of defendant seeking *pro hac* admission of attorney Stephanie M. Anderson on behalf of defendantsWSTR HOLDINGS, INC. d/b/a BIG DOG TREESTANDS, INC. and BUCHHEIT OF HERCULANEUM, INC., is hereby granted.

SO ORDERED:

Dated: _____

Judge

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

**ORDER GRANTING DEFENDANTS' CONSENT MOTION
TO ADMIT ATTORNEY MILTON S. KARFIS *PRO HAC VICE***

By consent, and being fully advised in the premises, the motion of defendant seeking *pro hac* admission of attorney Milton S. Karfis on behalf of defendants WSTR HOLDINGS, INC. d/b/a BIG DOG TREESTANDS, INC. and BUCHHEIT OF HERCULANEUM, INC., is hereby granted.

SO ORDERED:

Dated: _____

Judge

4532289

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

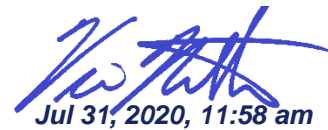
**ORDER GRANTING DEFENDANTS' CONSENT MOTION
TO ADMIT ATTORNEY STEPHANIE M. ANDERSON *PRO HAC VICE***

By consent, and being fully advised in the premises, the motion of defendant seeking *pro hac* admission of attorney Stephanie M. Anderson on behalf of defendantsWSTR HOLDINGS, INC. d/b/a BIG DOG TREESTANDS, INC. and BUCHHEIT OF HERCULANEUM, INC., is hereby granted.

SO ORDERED:

Dated: _____

Judge


Jul 31, 2020, 11:58 am **J5**

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Cause No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.


**ORDER GRANTING DEFENDANTS' CONSENT MOTION
TO ADMIT ATTORNEY MILTON S. KARFIS *PRO HAC VICE***

By consent, and being fully advised in the premises, the motion of defendant seeking *pro hac* admission of attorney Milton S. Karfis on behalf of defendants WSTR HOLDINGS, INC. d/b/a BIG DOG TREESTANDS, INC. and BUCHHEIT OF HERCULANEUM, INC., is hereby granted.

SO ORDERED:

Dated: _____

Judge


Jul 31, 2020, 11:58 am **J5**

4532289

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

Defendant.

Case No: 20JE-CC00277

SCHEDULING ORDER

COME NOW the Parties, by consent, and submit the following deadlines as requested by the Court.

1. This matter is set for a jury trial on **October 4, 2021**. Trial is expected to last one week.

This trial date may only be amended by leave of Court for good cause shown.

2. Discovery cutoff on or before **May 14, 2021**.

3. Plaintiff shall disclose all retained and non-retained experts on or before **March 26, 2021**.

4. Plaintiff shall produce all retained and non-retained experts for deposition on or before **April 23, 2021**.

5. Defendants shall disclose all retained and non-retained experts on or before **May 21, 2021**.

6. Defendants shall produce all retained and non-retained experts for deposition on or before **June 18, 2021**.

7. All dispositive motions shall be filed on or before **July 16, 2021**.

8. The parties shall participate in mediation on or before **August 20, 2021**.

9. The Parties agree to work with each other and the Court to set pre-trial deadlines related to exhibit lists, witness lists, written discovery designations, deposition designations, motions in limine, and jury instructions.

10. The Parties agree the dates set forth in this Second Amended Scheduling Order by Consent, except for trial date, may be amended by agreement of the Parties, or may be amended by leave of Court for good cause shown.

IT IS SO ORDERED.

Date

Judge Victor Melenbrink, Circuit Court Judge

Respectfully submitted,

EVANS AND DIXON, L.L.C.

By: /s/ Brian R. Shank
Brian R. Shank (#59955)
Metropolitan Square
211 North Broadway, Ste. 2500
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and

CLARK HILL PLC

MILTON S. KARFIS
Michigan Bar No. P55673
STEPHANIE I. ANDERSON
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mkarfis@clarkhill.com
sanderson@clarkhill.com

*ATTORNEYS FOR DEFENDANTS
BIG DOG TREESTANDS, INC. AND BUCHHEIT
OF HERCULANEUM, INC.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 17th day of September, 2020.

/s/Brian R. Shank_____

4592652

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Case No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

PROPOSED ORDER

Defendant Buchheit of Herculaneum, Inc.'s motion to dismiss is called, heard, and granted for the reasons stated on the record.

It is hereby ORDERED that Defendant Buchheit of Herculaneum, Inc. is dismissed pursuant to the Innocent Seller Statute Sec. 537.762 from the pending action.

IT IS SO ORDERED.

Date

Victor Joseph Melenbrink, Circuit Court Judge

Respectfully submitted,

EVANS AND DIXON, L.L.C.

By: /s/ Brian R. Shank
Brian R. Shank (#59955)
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*ATTORNEYS FOR DEFENDANTS
BIG DOG TREESTANDS, INC. AND BUCHHEIT
OF HERCULANEUM, INC.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 17th day of September, 2020.

/s/Brian R. Shank

IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
JEFFERSON COUNTY, MISSOURI

BEN SCOFIELD,

Plaintiff,

vs.

Case No: 20JE-CC00277

WSTR HOLDINGS, INC. d/b/a BIG DOG
TREESTANDS, INC.

and

BUCHHEIT OF HERCULANEUM, INC.

Defendants.

PROPOSED ORDER

Defendant Buchheit of Herculaneum, Inc.'s motion to dismiss is called, heard, and granted for the reasons stated on the record.

It is hereby ORDERED that Defendant Buchheit of Herculaneum, Inc. is dismissed pursuant to the Innocent Seller Statute Sec. 537.762 from the pending action.

IT IS SO ORDERED.

Date


Oct 30, 2020, 8:45 am **J5**

Victor Joseph Melenbrink, Circuit Court Judge

Clerk note: Claims are still pending against other defendants.

Respectfully submitted,

EVANS AND DIXON, L.L.C.

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*ATTORNEYS FOR DEFENDANTS
BIG DOG TREESTANDS, INC. AND BUCHHEIT
OF HERCULANEUM, INC.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 17th day of September, 2020.

/s/Brian R. Shank